Supreme Court, U.S.
FILED

98 1812 MAY 6 - 1999

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

MIR AIMAL KASI

Petitioner,

vs.

COMMONWEALTH OF VIRGINIA

Respondent.

On Petition for a Writ or Certiorari to the

Supreme Court of Virginia

APPENDIX - VOLUME I

APPENDICES A THROUGH W

Elwood Earl Sanders, Jr.
Commonwealth of Virginia
Public Defender Commission
701 East Franklin Street
Richmond, VA 23219
(804) 225-3297
Of Counsel

James Coyne King
Counsel of Record
Laurie J. Hurtt
HANIFY & KING
Professional Corporation
One Federal Street
Boston, MA 02110
(617) 423-0400
Counsel for Petitioner

200PP

APPENDICES — TABLE OF CONTENTS

VOLUME I

APPENDIX A

The Opinion of the Virginia Supreme Court in Kasi v. Commonwealth of Virginia.....1

APPENDIX B

The Virginia Supreme Court's Denial of Petition for Rehearing..24

APPENDIX C

The Virginia Trial Court's Sentencing Order.....25

APPENDIX D

The Virginia Trial Court's oral findings on Entry of Judgment and Sentencing Order.....29

APPENDIX E

The Virginia Trial Court's Denial of Defendant's Motion to Set Aside Verdict and Order a New Trial.....36

APPENDIX F

The Virginia Trial Court's Denial of Motion to Reconsider Defendant's Motion To Set Aside Verdict and For a New Trial..38

APPENDIX G

The Virginia Trial Court's Denial of Defendant's Motion to Suppress evidence seized as a result of Defendant's seizure in violation of the Fourth Amendment.....39

APPENDIX H

The Virginia Trial Court's oral findings in connection with Defendant's Motion to Suppress.....41

APPENDIX I

Further oral findings of the Virginia Trial Court in Support of its Denial of Defendant's Motion to Suppress.....47

APPENDIX J

Further oral findings of the Virginia Trial Court in Support of its Denial of Defendant's Motion to Suppress.....50

APPENDIX K

The Virginia Trial Court's Denial of Defendant's Motion to Dismiss for lack of jurisdiction and Denial of Defendant's Motions to Suppress Evidence obtained as a result of the violations of the Extradition Treaty and Vienna Convention.....53

APPENDIX L

The Virginia Trial Court's oral findings in Support of its Ruling on Defendant's Motion regarding violation of the Extradition Treaty.....56

APPENDIX M

The Virginia Trial Court's oral findings in Connection with its Ruling on Defendant's Motions regarding the Vienna Convention.....58

APPENDIX N

The Virginia Trial Court's Orders on Defendant's Motions to enforce subpoenas served upon the FBI and CIA.....63

APPENDIX 0

The Virginia Trial Court's oral findings in connection with Defendant's Motions to enforce the subpoenas served upon FBI and CIA.....66

APPENDIX P

The Virginia Trial Court's Rule To Show with respect to the CIA.....68

APPENDIX Q

The Virginia Trial Court's Rule to Show Cause with respect to the FBI.....69

APPENDIX R

Extradition Treaty of 1931, 47 Stat. 2122 (1931).....71

APPENDIX S

Extradition Act, Act XXI of 1972 of the Republic of Pakistan, The Pakistan Code, Volume XVIII.....87

APPENDIX T

Vienna Convention on Consular Relations, 21 U.S.T. 77 (1963).....100

APPENDIX U

28 C.F.R. §§ 16.21-16.29.....103

APPENDIX V

32 C.F.R., §§ 1905.1-1905.4.....116

APPENDIX W

Testimony of FBI Agent Bradley J. Garrett.....122

APPENDIX A

Present: All the Justices

MIR AIMAL KASI

v. Record Nos. 980797
980798

OPINION BY JUSTICE
A. CHRISTIAN COMPTON
November 6, 1998

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
J. Howe Brown, Judge

On Monday, January 25, 1993, near 8:00 a.m., a number of automobiles were stopped in two north-bound, left-turn lanes on Route 123 in Fairfax County at the main entrance to the headquarters of the Central Intelligence Agency (CIA). The vehicle operators had stopped for a red traffic light and were waiting to turn into the entrance.

At the same time, a lone gunman emerged from another vehicle, which he had stopped behind the automobiles. The gunman, armed with an AK-47 assault rifle, proceeded to move among the automobiles firing the weapon into them. Within a few seconds, Frank Darling and Lansing Bennett were killed and Nicholas Starr, Calvin Morgan, and Stephen Williams were wounded by the gunshots. All the victims were CIA employees and were operators of separate automobiles. The gunman, later identified as defendant Mir Aimal Kasi, also known as Mir Aimal Kansi, fled the scene.

At this time, defendant, a native of Pakistan, was residing in an apartment in Reston with a friend, Zahed Mir. Defendant

was employed as a driver for a local courier service and was familiar with the area surrounding the CIA entrance.

The day after the shootings, defendant returned to Pakistan. Two days later, Mir reported to the police that defendant was a "missing person."

On February 8, 1993, the police searched Mir's apartment and discovered the weapon used in the shootings as well as other property of defendant. Defendant had purchased the weapon in Fairfax County three days prior to commission of the crimes.

On February 16, 1993, defendant was indicted for the following offenses arising from the events of January 25th: Capital murder of Darling as part of the same act that killed Bennett, Code ¶ 18.2-31(7); murder of Bennett, Code ¶ 18.2-32; malicious woundings of Starr, Morgan, and Williams, Code § 18.2-51; and five charges of using a firearm in commission of the foregoing felonies, Code ¶ 18.2-53.1.

Nearly four and one-half years later, on June 15, 1997, agents of the Federal Bureau of Investigation (BI) apprehended defendant in a hotel room in Pakistan. Defendant had been travelling in Afghanistan during the entire period, except for brief visits to Pakistan.

One June 17, 1997, defendant was flown from Pakistan to Fairfax County in the custody of FBI agents. During the flight, after signing a written rights waiver form, defendant gave an oral and written confession of the crimes to FBI agent Bradley J. Garrett.

Following 15 pretrial hearings, defendant was tried by a single jury during ten days in November 1997 upon his plea of not guilty to the indictments. The jury found defendant guilty of all

charges and, during the second phase of the bifurcated capital proceeding, fixed defendant's punishment at death based upon the vileness predicate of the capital murder sentencing statute, Code § 19.2-264.4.

On February 4, 1998, after three post-trial hearings, during one of which the trial court considered a probation officer's report, the court sentenced defendant to death for the capital murder. Also, the court sentenced defendant to the following punishment in accord with the jury's verdict: For the first-degree murder of Bennett, life imprisonment and a $100,000 fine; for each of the malicious woundings, 20 years' imprisonment and a $100,000 fine; and for the firearms charges, two years in prison for one charge and four years in prison for each of the remaining four charges.

The death sentence is before us for automatic review under former Code § 17-110.1(A) (now § 17.1-313(A)), see Rule 5:22, and we have consolidated this review with defendant's appeal of the capital murder conviction. Former Code § 17-110.1(F) (now § 17.1-313(F)). In addition, by order entered April 23, 1998, we certified from the Court of Appeals of Virginia to this Court the record in the noncapital convictions (Record No. 980798). That record consists only of three notices of appeal from the conviction order. No other effort has been made to perfect the noncapital appeals; therefore, those convictions will be affirmed and we shall not address them further.

In the capital murder appeal, we will consider, as required by statute, not only the trial errors enumerated by the defendant but also whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, and

whether the sentence is disproportionate to the penalty imposed in similar cases. Former Code § 17-110.1(C) (now § 17.1-313(C)).

At the outset, we will discuss the number, nature, and legitimacy of many issues raised by defendant. He assigned 92 errors allegedly committed by the trial court (placing 91 in his opening brief) and has not argued many of them (Nos. 8, 14, 15, 17, 18, 20, 21, 25, 26, 28, 32, 45, 47, 52, 61, 69, 72, 77, 78, 80, 89, 91 and 92); hence, they are waived and will not be considered. Jenkins v. Commonwealth, 244 Va. 445, 451, 423, S.E.2d 360, 364 (1992), Cert. denied, 507 U.S. 1036 (1993).

In addition, defendant has effectively presented no meaningful argument in support of many assignments that are actually briefed. We have considered these so-called arguments and find no merit in any of them. Weeks v. Commonwealth, 248 Va. 460, 465, 450 S.E.2d 379, 383 (1994), cert. denied, 516 U.S. 829 (1995). In this category are assignments 2, 5, 16, 19, 22, 23, 24, 29, 30, 33, 43, 51, 54, 73, and 87.

Also, other errors alleged (Nos. 6, 39, and 64) raise issues we previously have decided adversely to the argument defendant makes, and those decisions will not be revisited here. Typical of this group is assignment of error 39: "The Circuit Court erred in denying the defendant's motion to declare the Virginia death penalty statute unconstitutional."

Finally, from our study of this entire record, including the 4,903-page appendix, we have determined that many assignments of error that are argued in depth are devoid of any merit whatever. These are: Nos. 1, 3, 7, 9, 10, 27, 31, 34, 37, 38, 40, 41, 42, 44, 46, 48, 49, 62, 63, 65, 67, 68, 71, 74, 75, 76, 79, and 88. This group requires no extended analysis and mainly raises issues involving

the exercise of discretion by the trial judge on subjects such as continuances, pretrial publicity, discovery, and appointment or disqualification of counsel. Typical of this group is assignment of error 49: "The Circuit Court erred in denying defendant's motions for a continuance filed on August 11, 1997, and October 1, and October 8." We have considered this entire group of alleged errors and reject them without any further discussion.

The remaining 23 assignments of error raise issues, inter alia, regarding defendant's apprehension, his confession, suppression of evidence, jury selection, and juror conduct. There is no conflict in the evidence relating to any of the facts presented during the guilt phase of this trial; the defendant presented no evidence.

Near 4:00 a.m. on June 15, 1997, Agent Garrett and three other armed FBI agents, dressed in "native clothing," apprehended defendant in a hotel room in Pakistan. Defendant responded to a knock on the room's door and the agents rushed inside. Defendant, who has "a master's degree in English," immediately began screaming in a foreign language and refused to identify himself. After a few minutes, defendant was subdued, handcuffed, and gagged. Garrett identified him through the use of fingerprints. During the scuffle, defendant sustained "minor lacerations" to his arm and back.

When the agents left the hotel with defendant in custody, he was handcuffed and shackled, and a hood had been placed over his head. He was transported in a vehicle for about an hour to board an airplane. During the trip, Garrett told defendant he was an FBI agent.

The ensuing flight lasted "a little over an hour." After the plane landed, defendant was transferred to a vehicle and driven for about 40 minutes to a "holding facility" where he was turned over to Pakistani authorities. The FBI agents removed defendant's handcuffs, shackles, and hood when the group arrived at the holding facility, but the persons in charge of the facility put other handcuffs on him. Defendant was placed in one of the eight cells in the facility, where he remained until the morning of June 17.

During defendant's stay in the facility, the FBI agents never left his presence or allowed him to be interrogated or "harassed." He was allowed to eat, drink, and sleep. On two occasions, the agents removed defendant from his cell to "look at his back and look at his arm" and to take his blood pressure and pulse. The agents did not interrogate defendant in the holding facility and made certain he was treated "fairly and humanely."

On June 16, "late in the day," Garrett was advised by an official at the U.S. Embassy in Pakistan that defendant would be "released" the next morning. On June 17 near 7:00 a.m., defendant "was allowed to be released" from the facility in the custody of the FBI agents. He was handcuffed, shackled, and hooded during a 15-minute ride to an airplane. Once on the plane, the hood was removed. Shortly after boarding the aircraft, a physician checked defendant's "well being."

During the 12-hour flight to Fairfax County, Garrett first conducted a "background" conversation with defendant, discussing "his life in the United States, where he lived, where he worked." Garrett knew, from his four-and-one-half-year search for defendant, that he was a Pakistani national. Defendant was not a

U.S. citizen and he had not returned to the United States after he fled on January 26, 1993.

After the background conversation, Garrett advised defendant of rights according to Miranda v. Arizona, 384 U.S. 436 (1966). Defendant signed an FBI "Advice of Rights" form, after reading it and having it explained to him. He indicated he was waiving his rights and was willing to give a statement. The subsequent interview lasted about one and one-half hours before defendant signed a written statement summarizing the interview.

In the written statement, defendant confirmed he purchased the AK-47 rifle and about 150 rounds of ammunition several days before the incident in question. He said he drove his pickup truck to the scene, "got out of my vehicle & started shooting into vehicles stopped at a red light." Continuing, he stated that "I shot approximately 10 rounds shooting 5 people. I aimed for the chest area of the people I shot. I then returned to my truck & drove back to my apartment." He also stated that "several days before the shooting I decided to do the shooting at the CIA or the Israeli Embassy but decided to shoot at the CIA because if was easier because CIA officials are not armed."

As part of his oral statement to Garrett, defendant enumerated political reasons "why he wanted to do this shooting." He said he was "upset" because U.S. aircraft had attacked parts of Iraq, he was "upset with the CIA because of their involvement in Muslin countries," and he was concerned with "killing of Pakistanians by U.S. components." When Garrett asked defendant "why he stopped shooting," he replied "there wasn't anybody else left to shoot." When asked about the gender of those shot,

defendant replied "that he only shot males because it would be against his religion to shoot females."

On appeal, defendant mounts several constitutional and other attacks upon the trial court's refusal to suppress and the court's admission in evidence of defendant's statement to Garrett. First, defendant claims the statement was involuntary and was obtained through coercion. We do not agree.

The evidence on the issue, presented both a pretrial suppression hearing and during the guilt phase of the trial, was overwhelming and uncontradicted that defendant validly waived any constitutional rights he may have had in connection with the statement and that the statement was voluntary. No threats or promises were made to defendant, either when he was apprehended or aboard the aircraft, he was not offered anything in return for his statement. Defendant, who "had good command of the English language," told Garrett that he "understood his rights fully and completely." He never refused to answer any question, and at no time during the 12-hour return flight did he express any fear or indicate he was making a statement because he was afraid. There is no evidence of coercion while he was detained in Pakistan. Indeed, the FBI agents were careful to assure he was treated humanely. The trial court's detailed findings of fact that the waiver was knowing, voluntary, and intelligent and that the statement was voluntary are fully supported by the record. See Roach v. Commonwealth, 251 Va. 324, 340-41, 468 S.E.2d 98, 108, Cert. denied, 519 U.S. 951 (1996).

Next, defendant, attacking the jurisdiction of the trial court, contends that "either the Extradition Treaty between the United States and Pakistan or the Vienna Convention for Consular

Relations were violated" requiring "sanctions" to be imposed for these alleged violations. He argues the "abduction/seizure of Kasi was conducted outside and in express violation of the Extradition Treaty between the United States and Pakistan and without invoking the procedures set out by the laws of each country" and was contrary to law. He says the "sanction" for violation of the treaty should be reversal of the capital murder conviction and "repatriation to Pakistan without prejudice for a new trial."

Continuing, he argues the "record shows that at no time did the federal agents advise Kasi of his right to consult with a Pakistani diplomat pursuant to article 36(1) of the Vienna Convention on Consular Relations." He says "that suppression of all statements obtained by virtue of this illegal arrest and abduction in violation of the extradition treaty . . . and the violations of the Vienna Convention is the appropriate alternative sanction to enforce treaty rights violated." We reject the arguments based on the treaty and the "Vienna Convention."

During the pretrial hearing, the Commonwealth's Attorney stipulated that defendant was arrested in Pakistan by an FBI agent; that the agent did not "have any jurisdiction in the nation of Pakistan;" that defendant "was not taken before a judicial officer . . . until he returned to the United States and was presented before this Court"; that "in the course of time from his arrest until he was brought to this country there was no compliance with the Vienna Convention until my letter of July 3rd"; and that "the seizure in Pakistan was not made pursuant to any Pakistani paper or document which would allow him to be seized under the laws of Pakistan."" The record shows there "was an unlawful flight warrant issued by a U.S. Magistrate in Alexandria in February of

1993 authorizing Federal agents to arrest Mr. Kansi." Also, the record shows that the July 3 letter mentioned in the Stipulation was a letter from the prosecutor formally notifying the defense of defendant's right to seek consular assistance.

The defendant relies upon an Extradition Treaty between the United States and the United Kingdom. 47 Stat. 2122 (1931). Apparently, there is no extradition treaty directly between the United States and Pakistan. But the Attorney General is willing to assume, as represented by the defendant, that the "Islamic Republic of Pakistan has continued in force treaty promulgated between its former colonial sovereign, the United Kingdom, and the United States," and that it applies to this case.

The defendant focuses on Article 8 of the treaty, which provides:

> "The extradition of fugitive criminals under the provisions of this Treaty shall be carried out in the United States and in the territory of His Britannic Majesty respectively, in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed."

Contrary to defendant's contention, nothing in this treaty can be construed to affirmatively prohibit the forcible abduction of defendant in this case so as to divest the trial court of jurisdiction or to require that "sanctions" be imposed for an alleged violation of the treaty. The decision on this issue is controlled by United States v. Alvarez-Machain, 504 U.S. 655 (1992).

There, the respondent, a citizen and resident of Mexico, was forcibly kidnapped from his home and flown by private plane to Texas, where he was arrested for his participation in the

kidnapping and murder of a federal Drug Enforcement Administration (DEA) agent and his Mexican pilot. DEA agents were "responsible" for the abduction, although they were not personally involved in it. Id. at 657. The United States has an extradition treaty with Mexico. The issue in the case was "whether a criminal defendant, abducted to the United States from a nation with which it has an extradition treaty, thereby acquires a defense to the jurisdiction of this country's courts." Id.

The Supreme Court, answering that query in the negative, said: "Extradition treaties exist so as to impose mutual obligations to surrender individuals in certain defined sets of circumstances, following established procedures." Id. at 664. The Court held that the treaty's language, "in the context of its history," failed to support the proposition that the treaty expressly prohibited abductions outside its terms. Id. at 666. The Court went on to hold that the treaty should not be interpreted to include an implied term prohibiting prosecution where a defendant's presence is obtained by means other than those established by the treaty. Id. at 666, 668-69. See Ker v. Illinois, 119 U.S. 436 (1886) (criminal defendant forcibly abducted from Peru to United States had no right to be returned to this country only in accordance with terms of extradition treaty between United States and Peru).

In the present case, as in Alvarez-Machain and Ker, defendant's seizure in a foreign country and his return to this country were not accomplished pursuant to an extradition treaty. The treaty language here does not expressly or impliedly prohibit prosecution in the United States where the defendant's presence was obtained by forcible abduction. Like the treaty in Alvarez-Machain, this treaty "does not purport to specify the only way in

which one country may gain custody of a national of the other country for the purposes of prosecution." Id. at 664. In sum, defendant was not "extradited" under the provisions of this treaty.

As a corollary to the treaty argument, defendant contends his seizure was "illegal and unreasonable" in violation of the Fourth Amendment to the U.S. Constitution and the equivalent Article I, ¶ 10 of the Constitution of Virginia. We do not agree.

In United States v. Verdugo-Urquidez, 494 U.S. 259, 266 (1990), the Supreme Court held: "the available historical data show . . . that the purpose of the Fourth Amendment was to protect the people of the United States against arbitrary action by their own Government; it was never suggested that the provision was intended to restrain the actions of the Federal Government against aliens outside of the United States territory." The Court also said, "There is likewise no indication that the Fourth Amendment was understood . . . to apply to activities of the United States directed against aliens in foreign territory or in international waters." Id. at 267.

We now turn to defendant's reliance on Article 36(1) of the Vienna Convention on Consular Relations and Optional Protocol on Disputes (Vienna Convention), 21 U.S.T. 77, T.I.A.S. No. 6820 (Apr. 24, 1963), and his claim that its alleged violation requires suppression of his confession. Defendant conceded in the trial court there is no reported authority for the idea that a violation of the treaty creates any legally enforceable individual rights. And, the provisions of the document create no such rights. Indeed, the preamble states that the "purpose . . . is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States." Article 36 merely deals

with notice to be furnished to the consular post of a national's state when the national is arrested or taken into custody in a foreign state.

In the present case, it makes no sense to say that, when the defendant was arrested in Pakistan and turned over to Pakistani authorities, the Vienna Convention required defendant to be notified of his right to contact Pakistani consular officers, even if that country maintained a "consulate" within its own borders. Indeed, the prosecutor, as soon as defendant returned to this country, notified the defense that defendant had the right to contact the Pakistani consulate here.

Finally on this issue, defendant's suggestion that if he had been advised of his so-called rights under the Vienna Convention, he would not have confessed to agent Garrett is just as speculative as the theory of "prejudice" that the Supreme Court recently rejected in Breard v. Greene, ___ U.S. ___, 118 S.Ct. 1352, 1355 (1998) (repudiating claim that if Vienna Convention had not been violated defendant would have accepted alleged plea agreement).

Next, defendant challenges the admissibility of an arguably inculpatory statement he made to a Fairfax County deputy sheriff and assets that such a claim is encompassed by assignments of error 4 and 83. Those assignments, however, challenge defendant's statements to federal authorities following his apprehension in Pakistan. None of defendant's assignments of error raises the issue argued; thus, it is procedurally defaulted. Rule 5:17(c).

Next, defendant contends the trial court erred when it refused to suppress the contents of a suitcase found during a search

of the apartment where defendant concealed the murder weapon. We disagree.

The record clearly establishes that Zahed Mir, defendant's roommate and the lessee of the apartment, consented to the search of a suitcase found in a hall closet within the apartment. Two handguns and magazines of AK-47 ammunition were found in the suitcase and eventually were received in evidence. The investigating police officer testified that he had received Mir's "verbal consent several times" to open the suitcase. The trial court correctly concluded, under the evidence, that Mir had the authority to give permission to the officer "to look in" the suitcase, rendering the search valid.

Next, defendant contends the trial court erred in denying his motion for a change of venue. Defendant asserts there were "inflammatory and inaccurate media reports" with "all three local newspapers" reporting that defendant had confessed to the crimes. Arguing that repeated inflammatory pretrial media reports mandate a change of venue, defendant says his constitutional right to a fair trial in this case was violated by refusal of his motion. We do not agree.

There is a presumption that a defendant will receive a fair trial in the jurisdiction where the crimes were committed. To overcome the presumption, a defendant must establish that the citizens of the jurisdiction harbor such prejudice against him "that it is reasonably certain he cannot receive a fair trial." Lilly v. Commonwealth, 255 Va. 558, 570, 499 S.E.2d 522, 531 (1998). The decision whether to grant a motion for a change of venue lies within the sound discretion of the trial court. Id.

In the present case, even though virtually all the prospective jurors indicated they had heard or read about the case, the court, after careful voir dire, seated a panel of 24 jurors, following detailed questioning of only 58 persons. Defendant did not overcome the presumption that he could receive a fair trial; there was no abuse of discretion by the trial court, especially in light of the relative ease with which the jury was selected. See Roach, 251 Va. at 342-43, 468 S.E.2d at 109.

Next, the defendant contends that the prosecutor, for discriminatory reasons, used a peremptory strike to remove juror 14, the "only juror of any color on the panel," according to defendant, in violation of Batson v. Kentucky, 476 U.S. 79 (1986), and that the trial court erred in ruling to the contrary. We disagree.

Responding to the claim, the Commonwealth's Attorney represented to the trial court he had struck the juror "because she was the only member of the entire panel who never read anything about the case or heard anything about the case. My fear is somebody like that is kind of detached from the real world, and that's why I struck her." The trial court accepted this explanation, and properly denied defendant's claim.

Batson dictates that purposeful discrimination based upon race in selecting jurors violates the Equal Protection Clause. Once an accused makes a prima facie showing of such discrimination, a prosecutor must furnish a reasonable explanation in rebuttal, showing that the reason for the peremptory strike was race neutral. If the explanation is based upon factors other than the juror's race, it is deemed to be race neutral. Id. at 89. Accord Wright v. Commonwealth, 245 Va. 177, 186, 427 S.E.2d 379, 386 (1993), vacated on other grounds, 512 U.S. 1217 (1994).

Assuming, without deciding, that defendant established a prima facie case of purposeful discrimination under Batson, we hold that the record supports the trial court's conclusion that juror 14 was not struck from the panel because of her race. Striking a juror because she had not even read or heard anything about a well-publicized case clearly is a race-neutral reason. See Spencer v. Murray, 5 F.3d 758, 763-64 (4th Cir. 1993) (prosecutor entitled to strike potential juror if he found it "odd" that juror had heard nothing about highly publicized case), Cert. denied, 510 U.S. 1171 (1994).

Next, defendant argues that the evidence was insufficient to support his capital murder conviction. Defendant notes that to find him guilty of Darling's capital murder, the Commonwealth had to prove that Bennett's killing was murder in the first degree. Code § 18.2-31(7) ("willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction" constitutes capital murder). Defendant contends that his murder of Bennett can rise no higher than murder in the second degree because the Commonwealth failed to prove he intended to kill Bennett. We reject this contention.

As the Attorney General points out, the evidence is undisputed that defendant deliberately shot Bennett twice in the chest at extremely close range with a high-powered assault rifle. In his confession, defendant stated not only that he planned and carried out the attack with premeditation and without any provocation, but also that he deliberately aimed his weapon at the victims' chests. This evidence establishes as a matter of law that Bennett's murder was intentional.

Next, defendant contends the trial court erred in denying his motion to "preclude" the testimony of Frank Darling's wife in the penalty phase after she had testified during the guilt phase of the trial. Defendant argues, "In this instance," calling for the second time the murder victim's wife to give victim impact testimony violates "the due process standard of fundamental fairness." We do not agree.

Mrs. Darling was a front-seat passenger in the automobile driven by her husband at the time of his murder. She testified during the guilt phase about the events surrounding the shootings. During the penalty phase, she testified only about the substantial impact of her husband's murder upon her life. This is the type of victim impact testimony approved in Payne v. Tennessee, 501 U.S. 808, 827 (1991), and in Weeks, 248 Va. at 476, 450 S.E.2d at 389-90, and the trial court correctly refused to exclude it.

Next, defendant contends the trial court erred in failing to sustain his "motion to strike the evidence as to vileness and future dangerousness," both of which issues were submitted to the jury in proper instructions. The defendant apparently does not argue the evidence was insufficient to establish that Darling's murder was vile, in that it involved "depravity of mind or aggravated battery to the victim," Code § 19.2-264.4(C). He admitted during oral argument there was "sufficient evidence to reach the jury on the question of vileness." Instead, he argues: "The trial court's failure to strike the evidence as to future dangerousness was a structural error that unfairly prejudiced Kasi in the sentencing phase" because the prosecutor's argument in support of the future dangerousness predicate (that defendant "would constitute a continuing serious threat to society," id.) "may well have made it

easier to show 'depravity of mind.'" There is no merit to this contention.

There was sufficient evidence to submit to the jury the issue of future dangerousness. Such a finding may be based upon "the circumstances surrounding the commission of the offense" of which defendant was accused. Id. And, a jury may properly conclude, which this jury chose not to do, that the circumstances of this heinous crime satisfy the future dangerousness predicate in that defendant would "constitute a continuing serious threat to society." Id. Hence, because the issue of future dangerousness properly was submitted to the jury, it becomes irrelevant whether the prosecutor's argument on that issue "may well have made it easier" to show vileness.

Next, defendant contends the trial court erred in denying his motion for a new trial because the prosecutor allegedly failed to disclose that Mrs. Darling had been diagnosed as having a post-traumatic stress disorder. The presentence report revealed that, as the result of defendant's murder of her husband in her presence, she suffered from the disorder. In the motion, defendant asserted the information concerning the disorder, affecting one of the Commonwealth's principal witnesses, was "exculpatory," and that the prosecutor's failure to disclose it at trial violated Brady v. Maryland, 373 U.S. 83 (1963). The trial court correctly denied the motion during a post-trial hearing.

The Commonwealth's Attorney unequivocally represented to the court that neither he nor any of the investigating police officers had knowledge at the time of trial "of the label that had been placed on this witness by a doctor in Pennsylvania." The court accepted the representation and found that no one connected

with the prosecution "knew of this event and there's no evidence that they did." Hence, there is no merit in defendant's Brady claim. The prosecution's duty to disclose is limited to information then known to it. See Robinson v. Commonwealth, 231 Va. 142, 155, 341 S.E.2d 159, 167 (1986).

Next, defendant contends the trial court erred in certain rulings on jury matters made during and after the trial. We already have ruled that several jury related issues defendant raises are meritless, that is, the court's refusal to inquire of the jurors whether they engaged in premature deliberations (assignment of error 31) and refusal to declare a mistrial when the jury expressed concern about their personal security (assignment of error 34).

During the morning of the second day of trial in the penalty phase, and after the verdict in the guilt phase had been announced, defendant advised the court there had been press reports that morning of the killing of four Americans in Karachi, Pakistan the preceding evening. Defendant then asked the court to question the jurors individually to determine whether any had heard or read the reports. The court declined the motion, but continued its practice of asking the jurors at the beginning of each day of trial whether they had followed the court's admonition not to read, look at, or listen to any reports about the case. Juror 31 accidentally heard a portion of a radio report about the Karachi killings, but the court, upon questioning her, determined she remained impartial and that none of the other jurors were aware of the report.

The case proceeded for the remainder of the morning with testimony of defendant's mitigation witnesses. After lunch, however, the trial court decided to sequester the jury for the rest of

the case. The court said the press reports of the trial had degenerated into "opinion and speculation," noting that "the reporting has gotten crazy."

The court's refusal to grant defendant's repeated motions for a mistrial during this series of trial events was an exercise of the court's sound discretion, and we find no abuse of that discretion.

Next, defendant contends the trial court erroneously denied permission for defendant to contact a juror for questioning and to conduct an inquiry about the jury's deliberations. The issue arose against the following background.

Prior to trial, the court denied permission for defendant to contact potential jurors. The names of the jurors were not made public by agreement of counsel. At the beginning of the penalty stage on November 11, the court entered an order prohibiting the disclosure of "the name, address, identity or image" of any juror after considering "the need to protect jurors, the absolute right of jurors not to discuss the case, and protection of the confidentiality of juror deliberations."

On November 20, six days after the jury's sentencing verdict was rendered, a newspaper published an article reporting information gleaned from an interview with one juror about the penalty stage deliberations. The article quoted the juror as stating, for example, that some jurors "thought the crime was vile because Kasi, an immigrant, 'had attached the American way of life.'" Also, the juror reportedly labeled defendant a "terrorist," a term the court had prohibited the participants from attaching to defendant during the trial proceedings.

On January 6, 1998, defendant moved to set aside the sentencing verdict, alleging juror misconduct on the basis of the article. He also asked for permission to subpoena the juror for interrogation. After a hearing, the trial court, assuming the news article accurately reported the juror's statements, denied both motions. The court ruled that the reported information "relates to the mental impressions of the jury and the way that they deliberated and considered the evidence." Hence, according to the court, inquiry of the jury was not allowed. The trial court was correct.

Virginia has been more careful than most states to protect the inviolability and secrecy of jury deliberations, adhering to the general rule that the testimony of jurors should not be received to impeach their verdict, especially on the ground of their own misconduct. Jenkins, 244 Va. at 460, 423 S.E.2d at 370. Generally, we have limited findings of prejudicial juror misconduct to activities of jurors that occur outside the jury room. Id. Here, the alleged misconduct clearly occurred within the confines of the jury room, and a post-trial investigation into the allegations was unwarranted.

Finally, defendant contends the sentence of death was imposed under the influence of passion, prejudice, or other arbitrary factor, and that the death sentence was excessive or disproportionate to the penalty imposed in similar cases. While not directly addressing those issues, defendant asks the Court to "commute this death sentence to life in prison without parole."

The defendant bases his plea for commutation on an argument laced with hyperbole, and threats inappropriate in an appellate brief. He reaches conclusions having absolutely no

foundation in this record. For example, he says the death sentence resulted from the "open hostility" of the trial judge and because the prosecutors "were diligent in maligning the defense team repeatedly in the media." The record shows otherwise. The trial court in all the proceedings was thorough, even-handed, and considerate of all counsel, and presided in a manner that was fair both to the Commonwealth and the defendant. The Commonwealth's Attorney was diligent, well-prepared, and did not exceed the bounds of conduct expected of an aggressive prosecutor.

The defendant says that because his crimes were "political," he somehow is entitled to First Amendment protection, and that his death sentence should be commuted to avoid possible violent acts of reprisal. As the Attorney General observes, defendant received the death sentence, not because he had a political motive, but because he murdered two innocent men, and maimed three others, in an extremely brutal and premeditated manner. As the defendant moved among the stopped automobiles, he shot through the rear window of the Darling vehicle, severely wounding Darling in the torso. In a few seconds, defendant appeared at the front of the Darling vehicle and fired at him again, destroying a part of his head. Darling also suffered at least one gunshot wound to his lower leg, resulting in a compound fracture. There is nothing "arbitrary" about a death sentence imposed under the circumstances of this case and, thus, there is no basis for commutation.

In conducting our proportionality review, we must determine "whether other sentencing bodies in this jurisdiction generally impose the supreme penalty for comparable or similar

crimes, considering both the crime and the defendant." Jenkins, 244 Va. at 461, 423 S.E.2d at 371. See former Code § 17-110.1(C)(2) (now § 17.1-313(C)(2)). We have examined our records of all capital murder cases, see former Code § 17-110.1(E) (now § 17.1-313(E)), including those cases where a life sentence was imposed. We have particularly studied those cases in which the death penalty was based on the vileness factor. See Cardwell v. Commonwealth, 248 Va. 501, 517, 450 S.E.2d 146, 156 (1994), cert. denied, 514 U.S. 1097 (1995).

Based upon this review, we conclude that defendant's death sentence is not excessive or disproportionate to penalties generally imposed by sentencing bodies in the Commonwealth for similar conduct. The death sentence generally is imposed for a capital murder when, as here, the defendant is also convicted of killing another person. Goins v. Commonwealth, 251 Va. 442, 469, 470 S.E.2d 114, 132 cert. denied, 519 U.S. 887 (1996).

Consequently, we hold the trial court committed no reversible error, and we have independently determined from a review of the entire record that the sentence of death was properly assessed. Thus, we will affirm the trial court's judgment.

Record No. 980797 – Affirmed.

Record No. 980789 – Affirmed.

APPENDIX B

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 8th *day of* January, 1999.

Mir Aimal Kasi, Appellant,

Against Record Nos. 980797 and 980798

Circuit Court No. 79148

Commonwealth of Virginia Appellee

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgments rendered herein on the 6th day of November, 1998 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy

Teste:

Clerk

APPENDIX C

SENTENCING ORDER

JURY TRIAL

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FEDERAL INFORMATION PROCESSING

STANDARDS CODE: **059**

Hearing Date: **January 23, 1998**

Judge: **J. HOWE BROWN**

COMMONWEALTH OF VIRGINIA

Versus

MIR AIMAL KASI, Defendant

This case came before the Court for sentencing of the Defendant, who appeared in person with his Counsel Richard Goemann, Frank Roman, Crystal Meleen and Judith Barger. The Commonwealth was represented by Robert Horan. The Defendant appeared while in custody.

On November 10, 1997, the Defendant was found guilty of the following offenses:

CASE NUMBER	OFFENCE DESCRIPTION AND INDICATOR (F/M)	OFFENSE DATE	VA. CODE SECTION
79148	CAPITAL MURDER Count I (F)	1/25/93	18.2-31(7)
79148	FIRST DEGREE MURDER – Count II (F)q	1/25/93	18.2-32
79148	MALICIOUS SHOOTING Count III (F)	1/25/93	18.2-51
79148	MALICIOUS SHOOTING Count IV (F)	1/25/93	18.2-51
79148	MALICIOUS SHOOTING Count V (F)	1/25/93	18.2-51

79148	USING A FIREARM IN THE COMMISSION OF A FIREARM IN THE COMMISSIONOF A FELONY – Count VI (F)	1/25/93	18.2-53.1
79148	USING A FIREARM IN THE COMMISIONOF A FIREARM IN THE COMMISSIONOF A FELONY – Count VII	1/25/93	18.2-53.1
79148	USING A FIREARM IN THE COMMISSION OF A FIREARM IN THE COMMISSION OF A FELONY – Count VII (F)	1/25/93	18.2-53.1
79148	USING A FIREARM IN THE COMMISSIONOF A FIREARM IN THE COMMISSION OF A FELONY – Count IX (F)	1/25/93	18.2-53.1
79148	USING A FIREARM IN THE COMMISSION OF A FIREARM IN THE COMMISSION OF A FELONY – Count X (F)	1/25/93	18.1-53.1

The presentence report was considered is ordered filed as a part of the record in this case in accordance with the provisions of Code § 19.2-2-299.

Before pronouncing the sentence, the Court inquired if the Defendant desired to make a statement and if the Defendant desired to advance any reason why judgment should not be pronounced.

The Court **SENTENCES** the defendant to:

On Count I – CAPITAL MURDER – The Court **ORDERED** that the Defendant be sentenced to death. The Court further **ORDERED** that September 15, 1998 be set as the date of execution.

Incarceration with the Virginia Department of Corrections for the terms of:

- FIRST DEGREE MURDER – Count II – Life and a fine of $100,000.
- MALICIOUS SHOOTING – Count II – Life and a fine of $100,000.

- MALICIOUS SHOOTING – Count IV – Twenty years imprisonment and a fine of $100,000.
- MALICIOUS SHOOTING – Count V – Twenty years imprisonment and a fine of $100,000.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY - Count VI – two (2) years in prison.
- USING A FIREARM INTHE COMMISSION OF A FIREARM IN THE COMMISSION OF A FELONY – Count VII – four (4) years in prison.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count VIII –four (4) years in prison.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count IX – four (4) years in prison.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count X – four (4) years in prison.

The total sentence imposed is **Death, Life in Prison and seventy-eight (78) years.**

FINE. The Court imposed a fine in the amount of $400,000 in this case.

COSTS. The Defendant shall pay all costs of this case.

APPEAL RIGHTS. The Court advised the Defendant of his right to appeal from the sentence imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay. It is **ORDERED** by the Court that in the event the Defendant or his Counsel files a notice of appeal, the transcript is to be prepared and is made a part of the record in this case.

The Court further **ORDERED** that the Office of the Public Defender be appointed to represent the Defendant in his appeal **PUBLIC DEFENDER FEE.** Richard Goemann, Office of the Public Defender, who was appointed to represent the Defendant in this case is allowed a fee of 265.00. This fee is to be assessed as costs as provided in Section 19.2-163.2(7) of the 1950 Code of Virginia, as amended.

The Defendant was remanded to the custody of the Sheriff.
ENTERED this 4th day of February, 1998

/ss_____
JUDGE J. HOWE BROWN

DEFENDANT IDENTIFICATION:
Alias: MIR AIMAL KANSI
SSN: 225-65-2625
DOB: 2-10-64
Sex: Male

SENTENCING SUMMARY:
TOTAL SENTECE IMPOSED:
- CAPITAL MURDER – Count I - Death
- FIRST DEGREE MURDER – Count II – Life and a fine of $100,000.
- MALICIOUS SHOOTING – Count III – Twenty years imprisonment and a fine of $100,000.
- MALICIOUS SHOOTING – Count IV – Twenty years imprisonment and a fine of $100,000.
- MALICIOUS SHOOTING – Count V – Twenty years imprisonment and a fine of $100,000.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count VI – two (2) years in prison.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count VII – four (4) years in prison.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count VIII – four (4) years in prison.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count IX – four (4) years in prison.
- USING A FIREARM INTHE COMMISSIION OF A FIREARM IN THE COMMISSION OF A FELONY – Count X – four (4) years in prison.

TOTAL SENTECE SUSPENDED: -0-

1 **APPENDIX D**

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----------x

COMMONWEALTH OF VIRGINIA :

-vs- : CRIMINAL DOCKET

MIR AIMAL KASI, : NO. 79148

Defendant. :

----------x

Circuit Courtroom 5E

Fairfax County Courthouse

Fairfax, Virginia

Friday, January 23, 1998

The above-entitled matter came on to be heard, without a Jury, before the HONORABLE J. HOWE BROWN, JR., Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, Fairfax, Virginia, beginning at 2:01 o'clock p.m.

APPEARANCES:

On behalf of the Commonwealth:

Robert F. Horan, Jr., Esq.

Commonwealth Attorney

On behalf of the Defendant:

Judith Barger, Esq.

Richard Goemann, Esq.

Crystal Meleen, Esq.

Frank Romano, Esq.

because it was -- it is the result of the wrong policy of the American government towards Muslims.

THE COURT: I don't find that to be a reason to delay sentencing. If you'll have a seat for a moment, please.

(The Defendants sits.)

THE COURT: With regard to the non-capital cases, the Court has reviewed the presentence report, considered the evidence, and I find no reason to alter the jury verdict. Therefore, in count two, the murder of Lansing Bennett, I sentence the Defendant to life plus $100,000 fine. In count three, the malicious shooting of Nicholas Starr, I sentence the Defendant to 20 years in the penitentiary and a $100,000 fine. In count four, the malicious shooting of Calvin Morgan, I sentence the Defendant to 20 years in the penitentiary and a $100,000 fine. In count five, the malicious shooting of Steven E. Williams, I sentence the Defendant to 20 years in prison plus a $100,000 fine. In count six, the use of a firearm in the murder of Frank Darling, I sentence the Defendant to two years in the penitentiary. In count seven, the use of a firearm in the murder of Lansing Bennett, I sentence the Defendant to four years in the penitentiary. In count

eight, the use of the a firearm in the maiming of Nicholas Starr, I sentence the Defendant to four years in the penitentiary. In count nine, the use of a firearm in the maiming of Calvin Morgan, I sentence the Defendant to four years in the penitentiary. In count ten, the use of a firearm in the maiming of Steven Williams, I sentence the Defendant to four years in the penitentiary.

Let me say personally and professionally whatever you may think of me, I have great respect for defense counsel. Ms. Meleen writes as good a brief as anyone can write. Mr. Romano and Mr. Goemann give as good a talk, question witnesses well, play off against each other, and represented Mr. Kasi well. Ms. Barger left all she had on the courtroom floor in an effort to save him from death before the jury. You provided him with a good and satisfactory and fine defense, and you have reason to -- no reason to be ashamed or worried about anything that you did.

When I was being questioned by the legislature in 1983 for this job, some member of the legislature, I don't remember who now, asked me a question that I thought then was a very strange question and still do. I wondered at the time if it was a trick question. And the question

was "Would you have any problem sentencing someone to death?" And my answer then and my answer now is yes. It's an awesome responsibility and I don't do it lightly, but in an appropriate case I will follow the law.

The jury found the act of killing Frank Darling to be vile. That finding is fully supported by the evidence. Mr. Kasi planned to shoot innocent people in circumstances where he thought it was the best chance of their being unarmed and unprotected. He chose a weapon specifically because of its accuracy. The evidence supports the theory that he shot Frank Darling and then returned to blow part of his head off while his wife sat beside him in the car. This act is the very essence of vile. The jury was fully justified in rejecting the evidence offered in mitigation. The experts differed on whether any lesions or damage that Mr. Kasi's brain has had any effect on his personality and altered his personality in any way that would mitigate his acts here.

If you follow the defense expert you come to one conclusion. If you follow the Commonwealth's expert you come to another conclusion. So as with many cases, we are left to the facts in the case and our analysis of it, and the facts do not support the theory that he had an

altered personality that should mitigate against the death penalty. He planned this killing several days in advance. This was not a sudden thing that he did. He gave and gives religious and political reasons for his acts. He came to the CIA prepared. He chose his victims carefully, avoiding women because he thought his religion required him to do so. He escaped and avoided capture for a number of years. His acts were the product of a depraved mind but not a brain-damaged mind.

It's true that he comes for a good family who love and support him. Some of the most poignant moments in this trial came when his former grammar school teachers testified, especially one who cried on the stand when shown his pictures as a young man and said "innocent boy." That innocent boy he may have been, but he grew into a cold blooded killer.

The jury gave the appropriate and just sentence in the murder of Frank Darling, and I find no reason to alter that sentence. I sentence the Defendant to death. I set the execution date September 15, 1998. Mr. Kasi has a right to appeal any error of the Court during this trial. And of course, the death sentence must be appealed, and I appoint Mr. Goemann of the Public

Defender's at this time to represent him on that appeal. He is remanded to the custody of the Sheriff to serve his sentence.

(The defendant exists.)

THE COURT: The court will stand in recess.

- -

(Whereupon, at 2:42 o'clock p.m. the hearing in the above-entitled matter was concluded.)

CERTIFICATE OF COURT REPORTER

I, STACEY B. GRIFFIN, a certified verbatim reporter, do hereby certify that the foregoing proceedings were taken by stenomask means which were thereafter reduced to typewriting by me; that the foregoing is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

STACEY B. GRIFFIN, CVR
Court Reporter

APPENDIX E

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	**) CRIMINAL**
VERSUS	**) NUMBER 79148**
MIR AIMAL KASI	**) INDICTMENT -**
A/K/A MIR AIMALKANSI	**) CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Court II), MAIMING (Count III, IV, V) and USING A FIREARM IN THE COMMISSION IN THE COMMISSION OF A FELONY (Count VI, VII, VIII, IX, X)**

On February 4, 1998, The Commonwealth's Attorney, the Defendant, MIR AIMAL KANSI, A/K/A- MIR AIMAL KANSI, Richard Goemann, Crystal Meleen, and Frank Romano, Counsel for the Defendant, appeared before this court. The Defendant stands convicted of the felonies of CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Count II), MAIMING (Count II, IV, V) and USING A FIREARM IN THE COMISSION OF A FIREARM IN THE COMMISSION OF A FELONY (Count VI, VII, VIII, IX, X) and he appeared while in custody.

This case came before this Court today on motions filed by counsel for the Defendant.

The Court denied, after hearing argument of Counsel, the Defendant's Motion for Return of Identifying Information Concerning Jurors and For Leave of court to Interview Jurors. The Court further **ORDERED** that the Office of the Public Defender not initiate any contact with any Juror.

The Court, without argument from the Commonwealth's Attorney, denied Counsel for the Defendant's Motion to Set Aside and Order a New Trial.

Counsel for the Defendant's Motion to continue was denied after hearing argument of Counsel.

The Court, after hearing evidence on behalf of the Defendant and argument of counsel, denied Counsel for the Defendant's Motion to Set Aside Verdict and For A New Trial.

Counsel for the Defendant's Motion to Continue was denied after argument of Counsel.

The Court, after hearing evidence on behalf of the Defendant and argument of Counsel, denied Counsel for the Defendant's Motion to set Aside Verdict and For A New Trial. Counsel for the Defendant moved the Court to accept the previous testimony of Judy Becker-Darling as evidence of this motion. The Court granted the motion without argument.

The Defendant was remanded to the custody of the Sheriff

Entered on February 17, 1998.

s/_____

JUDGE J. HOWE BROWN

cc: Robert Horan, Commonwealth Attorney

Richard Goemann, Counsel for the Defendant

APPENDIX F

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	**) CRIMINAL**
VERSUS	**) NUMBER 79148**
MIR AIMAL KASI	**) INDICTMENT -**
A/K/A MIR AIMAL KANSI	**) CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Court II), MAIMING (Count III, IV, V) and USING A FIREARM IN THE COMMISSION IN THE COMMISSION OF A FELONY (Count VI, VII, VIII, IX, X)**

On February 19, 1998, the Defendant, by Counsel, filed a Motion to Reconsider Defendant's Motion To Set Aside Verdict And For a New Trial. The Court, after a full consideration of the matter, denied the motion, without oral hearing, as the matters raised in the motion were fully considered at the hearing on the original motions.

Entered on February 24, 1998.

s/_____

JUDGE J. HOWE BROWN

cc: Commonwealth Attorney

Richard Goemann, Counsel for the Defendant

APPENDIX G

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	**CRIMINAL NUMBER 79148**
VERSUSS	)	
MIR AIMAL KASI A/K/A MIR AIMAL KANSI	)	**INDICTMENT CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Count II), MAIMING (Count III, IV, V) and USING A FIREARM IN THE COMMISSION IN THE COMMISSION OF A FELONY (Count VI, VII, VIII, IX, X)**

On October 27, 1997, the Commonwealth's Attorney, the Defendant, MIR AIMAL KANSI, and Richard Goemann, Crystal Meleen, Frank Romano, Judith Barger, Counsel for the Defendant, appeared before this court. The Defendant is indicted with the felonies of CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Count II), MAIMING (Count III, IV, V) and USING A FIREARM IN THE COMMISSION OF A FIREARM IN THE COMMISSION OF A FELONY (Count VI, VII, VIII, IX, X) and he appeared while in custody.

This case came before this Court today for hearings on motions filed by Counsel for the Defendant.

The Court, after hearing argument of counsel, denied the Defendant's Motion to Dismiss Indictment for Lack of Jurisdiction.

The Court denied the Defendant's Motion for Daily Transcript, after hearing argument of Counsel.

The Commonwealth's Attorney stipulated that the information contained in the search warrant is a true and accurate statement of the facts that was necessary to obtain the search warrant.

Counsel for the Defense withdrew the Motion to Suppress as it pertains to the search of the apartment.

The Court, after presentation of evidence and hearing argument of Counsel, denied the Defendant's Motion to Suppress the evidence seized in the suitcases.

After presentation of evidence and hearing argument of counsel, the Court denied the Defendant's Motion to Suppress Evidence seized as a result of his seizure in violation of the fourth amendment.

The Court denied the Defendant's Motion to Suppress Statements Made to Sheriff's Deputy Obtained in Violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 8 to the Virginia Constitution, after hearing argument of Counsel.

The Court, after presentation of evidence and hearing argument of Counsel, denied the Defendant's Motion to Change Venue.

The Defendant was remanded to the custody of the Sheriff.

Entered on November 5, 1997.

S/_____
JUDGE J. HOWE BROWN

cc: Robert Horan, Commonwealth Attorney
Richard Goemann, Counsel for the Defendant

APPENDIX H

PARTIAL TRANSCRIPT

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----------x

COMMONWEALTH OF VIRGINIA, :

vs. : CRIMINAL NO.79148

MIR AIMAL KASI :

a/k/a MIR AIMAL KANSI, :

Defendant. :

----------x

Courtroom No. 4H

Fairfax County Judicial Center

Fairfax, Virginia

Monday, October 20, 1997

The above-entitled matter came on to be heard before THE HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, Virginia, beginning at 10:00 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

Robert Horan, Esquire

Commonwealth Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire

Frank Romano, Esquire

Crystal A. Meleen, Esquire

Judith Barger, Esquire

OFFICE OF THE PUBLIC DEFENDER

which basically means that a citizen of the United States who goes abroad and is arrested by the United States law enforcement officers and brought back to the United States can not claim a 4th Amendment violation.

The whole discussion of Verdugo is what does the people mean. And the people means citizens or people who have this substantial connection with the United States. That's their whole focus in Verdugo. What does this word, this phrase mean.

And surely if a person, a citizen of the United States leaves this country, they have not forfeited their peoplehood, they have not forfeited the protections of being part of the people of the United States. So the status of the person is crucial.

And again, Your Honor, I submit that it is the Commonwealth that has the burden to prove that status when they are asking that someone that they seized not receive the protections of the Constitution.

THE COURT: I find two things. First, I find that the status of the person is the issue in Verdugo, or however you say that word. And I find further the burden is on the Defendant to show that.

The issue that we need to address is was this

Defendant one of the people. He is asking that protection of the 4th Amendment be applied to him. He has to make a prima facia case to show that he is entitled to claim that protection and at least a prima facia case that it was violated.

Now I think once he makes that prima facia case then I, in disagreement with Mr. Horan, I guess, think the burden is on the Commonwealth to prove the facts with regard to that event.

But to bring himself within -- the Commonwealth isn't asking that anything that he be deprived of any right. He's asking that certain things be done because he's entitled to the right. And he has to show a prima facia case that he's entitled to it. In most cases, there isn't any question. Nobody, you know, everybody -- it's one of those everybody knows things.

But here, the only thing I know from the -- anything in the case about Mr. Kansi's connection with the United States is that on one day he is accused of being here. I know knowing else about it, and I think the burden is on you to show it.

If you want to rely on that and just say, you know, stop there, I guess you can and you can appeal on

that point and we'll see. If you want to go forward and present evidence that he is one of the people, I'll hear the evidence. But if you're going to rely on where you are, then I say you have not made a burden that requires the Commonwealth to go forward and he's not entitled to the protection of the 4th Amendment because you haven't made the case that he is.

So I guess you've got a choice. You can either rest there and live to fight another day or you can present the evidence and live to fight another day.

MR. GOEMANN: As much as I'd like to rest, Your Honor, right now, I will not. Let me note my exception to the Court's ruling.

THE COURT: You may certainly note your exception.

MR. GOEMANN: And I would ask, then, for a brief continuance to subpoena a witness that I believe will be able to meet the Court's burden that is placed on the Defendant.

THE COURT: Okay. What does that do to any evidence that you may have brought to -- do you have any objection, I guess? How about the 22nd. We've got the 22nd. Is that enough time?

MR. GOEMANN: If I can -- if I can get a subpoena issued today, Your Honor, I might be able to get it served tomorrow for the 22nd.

THE COURT: What's your position?

MR. HORAN: Well, Judge, the problem is that we've come in here prepared to respond to the allegations. They have made no claim either a, that he's an American citizen or that he occupies some peculiar status which makes the 4th Amendment apply to --

THE COURT: Well, they didn't do that because they erroneously thought that was your burden. I now have said it's not your burden. It's theirs.

I guess if you want to present your evidence and have me wait and see, you can do that, if you want to. If you have a problem getting your witnesses back here on the 22nd.

It's your burden to show the facts of the event if, in fact, he comes within the purview of the -- of the 4th Amendment which I don't know at this point.

MR. HORAN: They will have to get someone to perjure himself or herself to prove that he's an American citizen because he's not.

THE COURT: Well, I think -- well, I won't say

that. The issue is not is he an American citizen, the issue is he one of the people in the 4th Amendment.

So are we going to continue to the 22nd? Do you need another date?

MR. GOEMANN: Your Honor, well, the 27th. We have that date. I don't want to take any chances of having to come up and bring the witnesses again --

THE COURT: Yeah, I guess, okay.

MR. GOEMANN: -- and us being unable to subpoena a witness.

THE COURT: I guess we can do it on the 27th. We'll be busy little beavers on the 27th, I guess.

What are we continuing to the 27th? Again, I know that these motions overlap to some extent and I'm trying to keep straight what motion I'm hearing.

I have in my hand, here, the motion to suppress evidence that begin in the way that I said that sometime the beginning of June the Defendant, Mir Aimal Kansi, was abducted from Pakistan. Is that the motion we're continuing to the 27th?

MR. GOEMANN: Yes, Your Honor.

THE COURT: Are there any others yet? Or is

23 that it as far as --

APPENDIX I

PARTIAL TRANSCRIPT

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----------x

COMMONWEALTH OF VIRGINIA, :

vs. : CRIMINAL NO.79148

MIR AIMAL KASI :

a/k/a MIR AIMAL KANSI, :

Defendant. :

----------x

Courtroom No. 4H

Fairfax County Judicial Center

Fairfax, Virginia

Monday, October 20, 1997

The above-entitled matter came on to be heard before THE HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, Virginia, beginning at 10:00 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

Robert Horan, Esquire

Commonwealth Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire

Frank Romano, Esquire

Crystal A. Meleen, Esquire

Judith Barger, Esquire

OFFICE OF THE PUBLIC DEFENDER

that -- to try to reduce this to sort of an absurd scenario, I think really misses the point.

If someone has been here for several years then the fourth amendment does apply to them and Reed versus Covert, clearly says that, the fourth amendment is not bound by the borders of the United States. If it applies to you here, then when you go across to another country, the fourth amendment applies to you. And that's what Reed was all about.

So there's no -- it doesn't -- the protections that you have here don't stop at the border and I don't think any of this case law can be read to indicate that. And I would ask that the Court find that we did meet our burden here. I'll stop at that.

THE COURT: I find that the fourth amendment does not apply to Mr. Kasi's, we'll call it arrest. I don't know whether I'm using the right word or not but let's call it that, in Pakistan, but we're in a foreign country by the FBI. The Defendant's evidence shows that he is not one of the people to whom the fourth amendment applies.

He was last in this country four and a half years before the event that I'm calling the arrest. He's

not a U.S. citizen. There's no evidence he had any contact with the United States in the intervening period of time and the arrest occurred in a foreign country. And under those facts, he is not entitled to the protection.

Now, on the -- it's always possible that I'm wrong about that and if you want to present evidence or argue the point that -- I mean the evidence was presented, I take it, at least in part by Agent Garrett last week. If you want to argue the point of whether the fourth amendment, if it applied, was violated or not, you may in order to give the Appellate Court the chance to say, well, you're wrong about that but it does or doesn't apply.

MR. HORAN: Well, Your Honor, it is very hard from reading the United States Supreme Court cases to find out just what sort of connection they're talking about.

THE COURT: No; I'm not talking about connection. I'm talking about assuming that I'm -- I said it didn't apply. Assuming I'm wrong about that, then some Court needs to decide whether the fourth amendment was, in fact, violated or not.

MR. HORAN: Well, I --

THE COURT: If they -- if they wanted to say that it did apply. So, I'm offering you an opportunity,

APPENDIX J

PARTIAL TRANSCRIPT

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----------x

COMMONWEALTH OF VIRGINIA, :

vs. : CRIMINAL NO.79148

MIR AIMAL KASI :

a/k/a MIR AIMAL KANSI, :

Defendant. :

----------x

Courtroom No. 4H

Fairfax County Judicial Center

Fairfax, Virginia

Monday, October 20, 1997

The above-entitled matter came on to be heard before THE HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, Virginia, beginning at 10:00 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

Robert Horan, Esquire

Commonwealth Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire

Frank Romano, Esquire

Crystal A. Meleen, Esquire

Judith Barger, Esquire

OFFICE OF THE PUBLIC DEFENDER

pursuant to any kind of legal process.

And for all those reasons, Your Honor, the Commonwealth has not shown that the manner of this seizure was reasonable and therefore had the Court ruled that the fourth amendment applied to Mr. Kasi, we would ask that the Court suppress the evidence because the manner of the seizure was unreasonable.

THE COURT: I think that the argument points up why you just can't apply the fourth amendment to a foreign national seized, I'll use your word seized. I think my word arrest is not the right word, with all of the other baggage that it carries, why you can't apply the fourth amendment to a seizure in a foreign country of a foreign national.

Mr. -- I think Mr. Horan stipulated that the FBI didn't have any jurisdiction there. So it is like a citizen doing this and the citizen seized Mr. Kasi, turned him over to a foreign country, later was -- received him back and brought him back here. And it is simply not within any fourth amendment idea. It's reasonable but not if you -- not if you're going to require that they have some kind of jurisdiction in the foreign country, because they don't.

So I think it's a circular argument and I wasn't as successful in getting to a point where I could make it clear for an Appellate Court as I had hoped, because you -- I'm chasing my tail. It -- the fourth amendment simply doesn't apply. But you have other motions.

MR. GOEMANN: Yes, Your Honor.

THE COURT: Okay.

MR. ROMANO: I think we're at a point where again, we say the fifth amendment applies and Mr. Horan says, no it doesn't.

THE COURT: Let's see, now which --

MR. ROMANO: Motion to Suppress the statement allegedly made to a Sheriff's deputy.

THE COURT: Okay.

MR. ROMANO: Your Honor, we've been apprised of the fact by Mr. Horan that supposedly there was a statement made by Mr. Kasi to a Sheriff's deputy on July 24th. We'd move to suppress it as violating the fifth amendment.

If the Commonwealth -- our position is that the Commonwealth intends to introduce this statement. They have to prove that it is constitutionally valid.

APPENDIX K

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	**CRIMINAL NO. 79148**
VERSUS	)	
MIR AIMAL KANSI	)	**INDICTMENT – CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Count II), MAIMING (Count III, IV, V) and USING A FIREARM IN THE COMMISSION OF A FIREARM IN THE COMMISSION OF A FELONY (Count VI, VII, VIII, IX, X)**

On October 20, 1997, the Commonwealth's Attorney, the Defendant, MIR AIMAL KANSI, and Richard Goemann, Crystal Meleen, Frank Romano, Judith Barger, Counsel for the Defendant, appeared before this court. The Defendant is indicted with the felonies of CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Count II), MAIMING (Count III, IV, V) and USING A FIREARM IN THE COMMISSION OF A FIREARM IN THE COMMISSION OF A FELONY (Count VI, VII, VIII, IX, X) and he appeared while in custody.

This case came before this Court today for hearings on motions filed by Counsel for the Defendant.

The Commonwealth's Attorney stipulated that the Defendant was arrested in Pakistan by the F.B.I.; the F.B.I. agent who arrested him did not have jurisdiction in Pakistan; the

Defendant was not taken before a judicial officer until he was returned to the United States; there was no compliance with the Vienna Convention prior to his arrival in the United States; the seizure of the Defendant was not made pursuant to any Pakistanian paper or document.

The Court, after hearing argument of Counsel, granted the Defendant's Motion to dismiss the Rule to Show Cause for the Immigration and Naturalization Service.

The Court, after ruling that a state court has no jurisdiction to hold a federal agency in contempt, dismissed Rules to Show Cause for the Central Intelligence Agency and the Federal Bureau of Investigation.

The Court granted, without objection by the Commonwealth's Attorney, the Defendant's oral motion to continue the Motion to Change Venue. The Court ORDERED that the Motion to Change Venue be continued until October 27, 1997 at 10:00 a.m..

The Court, after hearing argument, granted Counsel for the Defendant's oral Motion to Continue the Motion to Suppress as it pertains to the Defendant's Seizure in Pakistan. The Court ORDERED that the Motion to Suppress as it pertains to the Defendant's Seizure in Pakistan be continued until October 27, 1997 at 10:00 a.m..

The Court heard evidence and argument of Counsel on Defendant's Motion to Suppress Statements made on June 17, 1997 on the ground that the statements were obtained in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Virginia Constitution, Motion to Suppress Statements on the ground that the statements were

obtained in violation of the Vienna Convention, and Motion to Dismiss the Indictment, or Alternatively, to Suppress Statements on the ground that the statements were obtained in violation of the laws of Virginia and Pakistan. Counsel for the Defendant moved orally to continue the Motions. The Court denied Defendant's Motion to Suppress Statements on all grounds, denied Defendant's Motion to Dismiss the Indictment, and denied Defendant's Motion to Continue.

The Court, after hearing argument, denied the Defense Motion to Dismiss the Indictment.

The Court granted, without objection by the Defendant or his Counsel, the Commonwealth's Attorney's motion to amend the indictment by striking the Defendant's last name and replacing it with the name "KASI " and the wording "A/K/A MIR AIMAL KANSI".

The Defendant was remanded to the custody of the Sheriff.

Entered on November 5, 1997.

S/_____
JUDGE J. HOWE BROWN

cc: Robert Horan, Commonwealth Attorney
Richard Goemann, Counsel for the Defendant \

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA,	:	
vs.	:	CRIMINAL
	:	NO.79148
MIR AIMAL KASI,	:	
a/k/a MIR AIMAL KANSI	:	
Defendant.	:	

Courtroom No. 5G

Fairfax County Judicial Center

Fairfax, Virginia

Monday, October 27, 1997

The above-entitled matter came on to be heard before THE HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, Virginia, beginning at 10:02 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

Robert Horan, Esquire

Commonwealth's Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire

Frank Romano, Esquire

Crystal A. Meleen, Esquire

Judith Barger, Esquire

OFFICE OF THE PUBLIC DEFENDER

THE COURT: Anything else you want to say, Mr. Goemann, about that?

MR. GOEMANN: No; Your Honor.

THE COURT: All right; I do not find -- well, I find that the Treaty -- I find that the Treaty is a matter of -- between the United States government and the government of Pakistan. It does not afford any individual an individual right to have the Treaty followed or not followed or to get the case dismissed if it is or isn't followed.

Mr. Kasi is before the Court now and we have the jurisdiction to try him for the alleged crimes here. So I deny the motion. The next motion.

MR. GOEMANN: Your Honor, If I could just ask if certain witnesses are present in the Courtroom?

THE COURT: All right.

MR. GOEMANN: Jeff Frederick, Bill Rich, Christian Orchetty [ph].

(No response.)

MR. ROMANO: Your Honor, I have two motions which I believe are resolvable. One is, a notice and motion for daily transcript of the proceedings.

THE COURT: Uh-huh.

APPENDIX M

PARTIAL TRANSCRIPT

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COURT

----------x

COMMONWEALTH OF VIRGINIA, :

vs. :

MIR AIMAL KASI : CRIMINAL

a/k/a MIR AIMAL KANSI, : NUMBER 79148

Defendant. :

----------:

Courtroom No. 4H

Fairfax County Judicial Center

Fairfax, Virginia

Monday, October 20, 1997

The above-entitled matter came on to be heard before THE HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, Virginia, beginning at 10:00 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

Robert Horan, Esquire

Commonwealth Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire

Frank Romano, Esquire

Crystal A. Meleen, Esquire

Judith Barger, Esquire

OFFICE OF THE PUBLIC DEFENDER

Constitutional violation. That's what the Judge was talking about and that's what the quote comes from, that part of the opinion.

There's a second issue and that was because you didn't read him his rights or tell him of his right to contact the consulate pursuant to the Vienna Convention his guilty plea was not a knowing and voluntary and intelligent guilty plea.

And that's as close to the argument that we're asserting that I can get. And the Court did recognize that that may have been a defense but said it was procedurally defaultive. It never ruled on it, Your Honor.

So that is the issue that we are addressing now. We are not arguing that the Vienna Convention creates a Constitutional right. What we're saying is that when you interrogate someone, when a police officer interrogates someone who is in custody that for the waiver of his 5th Amendment rights to be a knowing and voluntary and intelligent waiver as is prescribed by Miranda he must be informed of his rights pursuant to the Vienna Convention to contact the consulate of his country.

THE COURT: I deny that motion to suppress. I

think although it's almost mathematical, I think I can show you that your argument is circular and can't lead anywhere because it just runs around in a circle and one piece of it depends on the other piece of it, depends on the other piece of it until you come back to the beginning.

The rights that Miranda requires be informed and informantly waived are Constitutional rights. If the rights, if there are any, under the Vienna Convention are not Constitutional rights as beyond for adventure they are not, would have no more efficacy than a statute and you can't say that's something that ought to be put into Miranda because Miranda only talks about Constutional rights.

And if you're confused about what I said I think that demonstrates that your argument must fail, that particular argument. The best argument that you've got, and I can read this around the periphery, although it may have been the very point you were trying to make, although maybe you didn't try to make it as all and will wonder what I'm talking about. But what I think is the best argument is one of the factors that should be considered in considering voluntariness is whether he had some other

rights that were not taken account of. And maybe that's a factor, except for two things.

1. I find that the Vienna Convention does not create any individual rights. It's not an individual right treaty. It's a treaty between nations and it can't give rise to an individual right that an individual can claim.

But secondly and more importantly, at best it's only part of the picture here. And even if you include it in the totality of the circumstances his waiver of the Constitutional rights that he was clearly told about and that he clearly waived on the Miranda form was a voluntary waiver of those rights.

And, again, his education is very important. If he didn't know anything about the Constitutional he sure didn't know anything about the Vienna Convention. But he was told these are rights that you have and you're waiving them and the fact that he wasn't told about some other right that you think he might have had doesn't affect the voluntariness in the totality of the circumstances of the waiver that he made.

I guess if anybody can make sense of that we can move on with it. But in any event, I deny that motion

to suppress.

And I just have one left so I guess that must be –

MS. MELEEN: You do, Your Honor. And that is entitled motion to dismiss the indictment, the one with the dismissal.

THE COURT: Okay.

MS. MELEEN: Your Honor, I intend to follow very closely with the memorandum in support of the motion on this one because it is difficult to articulate and very specific and so I intend to go through them at random with Your Honor.

Virginia Code 19.2-80 sets forth the requirements that a law enforcement officer making arrest under a capias which you will notice that the language of this is – I know a lot more than I did when I typed this, let's put it that way, Your Honor.

This is some of the information that we were trying to get as a result of our subpoena request and so you can set where we were at a disadvantage by not having this information.

But the argument goes that when an arrest is made the law enforcement officer is required to bring the

APPENDIX N

VIRGINIA **11/3/97 s/ JHB**

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

VERSUS **CRIMINAL NO. 79148**

MIR AIMAL KASI **INDICTMENT – CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Court II), MAIMING (Count III, IV, V) and USING A FIREARM IN THE COMMISSION OF A FIREARM IN THE COMMISSIONOF A FELONY (Count VI, VII, VIII, IX, X)**

On October 20,1997, the Commonwealth's Attorney, the Defendant, MIR AIMAL KANSI, and Richard Goemann, Crystal Meleen, Frank Romano, Judith Barger, Counsel for the defendant, appeared before this court. The Defendant is indicted with the felonies of CAPITAL MURDER (Count I), FIRST DEGREE MURDER (Count II), MAIMING (Count II, IV, V) and USING A FIREARM INTHE COMMISSION OF A FIREARM IN THE COMMISSION OF A FELONY (Count VI, VII, VII, IX, X) and he appeared while in custody.

This case came before this Court today for hearings on motions filed by Counsel for the Defendant.

The Commonwealth's Attorney stipulated that the Defendant was arrested in Pakistan by the F.B.I.; the F.B.I. agent who arrested him did not have jurisdiction in Pakistan; the

Defendant was not taken before a judicial officer until he was returned to the United States; there was no compliance with the Vienna Convention prior to his arrival in the United States; the seizure of the Defendant was not made pursuant to any Pakistanian paper or document.

The Court, after hearing argument of Counsel, granted the Defendant's Motion to dismiss the Rule to Show Cause for the Immigration and Naturalization Service.

The Court, after ruling that a state court has no jurisdiction to hold a federal agency in contempt, dismissed Rules to show cause for the Central Intelligence Agency and the Federal Bureau of Investigation.

The Court granted, without objection by the Commonwealth's Attorney, the Defendant's oral motion to continue the Motion to Change Venue. The Court ORDERED that the Motion to Change Venue be continued until October 27, 1997 at 10:00 a.m.

The Court, after hearing argument, granted Counsel for the Defendant's oral Motion to Continue the Motion to suppress as it pertains to the Defendant's Seizure in Pakistan. The Court ORDERED that the Motion to Suppress as it pertains to the Defendant's Seizure in Pakistan be continued until October27, 1997 at10:00 a.m.

The Court heard evidence and argument of Counsel on Defendants 's Motion to Suppress Statements made on June 17, 1997 on the ground that the statements were obtained in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Virginia Constitution, Motion to Suppress Statements on the ground that the statements were

obtained in violation of the Vienna Convention, and Motion to Dismiss the Indictment, or Alternatively, to Suppress Statements on the ground that the statements were obtained in violation of the laws of Virginia and Pakistan. Counsel for the Defendant moved orally to continue the Motions. The Court denied the Defendant's Motion to suppress Statements on all grounds, denied Defendant's Motion to Dismiss the Indictment, and denies Defendant's Motion to Continue.

The Court, after hearing argument, denied the Defense Motion to Dismiss the Indictment.

The Court granted, without objection by the Defendant or his Counsel, the Commonwealth's Attorney's motion to amend the indictment by striking the Defendant's last name and replacing it with the name "KASI" and the working "A/K/A MIR AIMAL KANSI".

The Defendant was remanded to the custody of the Sheriff.

Entered on November 5, 1997.

s/_____

JUDGE J.HOWE BROWN

cc: Robert Horan, Commonwealth Attorney

Richard Goemann, Counsel for the Defendant

APPENDIX O

PARTIAL TRANSCRIPT

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----------x

COMMONWEALTH OF :
VIRGINIA, :
vs. : CRIMINAL NUMBER 79148
MIR AIMAL KASI :
a/k/a MIR AIMAL KANSI, :
Defendant. :

----------x

Courtroom No. 4H
Fairfax County Judicial Center
Fairfax, Virginia
Monday, October 20, 1997

The above-entitled matter came on to be heard before THE HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, Virginia, beginning at 10:00 o'clock a.m.

APPEARANCES: On Behalf of the Commonwealth:

Robert Horan, Esquire
Commonwealth Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire
Frank Romano, Esquire
Crystal A. Meleen, Esquire
Judith Barger, Esquire
OFFICE OF THE PUBLIC DEFENDER

Sharon has even said today that there's a valid government regulation. They cite Toohey which says if there is one, the government official can come in here and deny it. There has yet to be a statement by the government on any -- of any agency that there's a valid government regulation by which they may take themselves out of the purview of a subpoena that was issued by this Court.

THE COURT: We can, as Judges, sometimes by cajoling and bullying and pushing get things done that we know we can't do if push comes to shove, and push has come to shove and I'm not going to do something that doesn't -- that I can't enforce any further. This needs to come to an end.

I don't find there's any jurisdiction of a state court to hold a federal official in contempt for failing to respond to a state court's subpoena. And for that, and the other reasons stated by Ms. Sharon, the rule to show cause is dismissed.

MR. ROMANO: Your Honor, would you please note our exception?

THE COURT: Yes.

MR. ROMANO: For purposes of the record.

THE COURT: Of course.

APPENDIX P

VIRGINIA :

FILED
CRIMINAL
97 OCT 22 AM 8:21
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINAI :

vs. : Criminal No. K79148

MIR AIMAL KANSI :

RECEIVED
97 OCT 16 AM 8:56
OFFICE OF THE SHERIFF
FAIRFAX COUNTY, VIRGINAI

RULE TO SHOW CAUSE

Upon motion of the Defendant and after consideration of the affidavit filed herein, it is hereby

ORDERED, that the Office of the Sheriff serve this Rule to Show Cause upon the Custodian of Records for the Central Intelligence Agency, c/o CIA Headquarters, 930 Dolley Madison Blvd., McLean, Virginia; and it is further

ORDERED, that the custodian of Records for Central Intelligence Agency appear before this Court on October 20, 1997, at 10:00 a.m., to show cause why said Custodian should not be held in contempt for failing to respond to a subpoena dues tecum issued by this court.

S/15 October 1997 S/_____

Date Judge Howe Brown

APPENDIX Q

VIRGINIA :

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINAI :

vs. : Criminal No. K79148

MIR AIMAL KANSI :

RULE TO SHOW CAUSE

Upon motion of the Defendant and after consideration of the affidavit filed herein, it is hereby

RECEIVED
97 OCT 16 AM 8:56
OFFICE OF THE SHERIFF
FAIRFAX COUNTY, VIRGINIA

ORDERED, that the Office of the Sheriff serve this Rule to Show Cause upon the Custodian of Records for the Federal Bureau of Investigation, 7799 Leesburg Pike, Falls Church, Virginia; and it is further

ORDERED, that the Custodian of Records for the Federal Bureau of Investigation appear before this Court on October 20, 1997, at 10:00 a.m., to show cause why said Custodian should not be held in contempt for failing to respond to a subpoena dues tecum issued by this court.

S/15 October 1997

S/_____

Judge J. Howe Brown

Executed in Fairfax County, Virginia, the
16th day of Oct., 1997, 11:14 a.m.
by delivering a true copy of the within mentioned
papers to
Ed Williams (Supervisory Special Agent)
For Federal Bureau of Investigation

Carl R. Peed, SHERIFF

By:S/_____

Deputy Sheriff

APPENDIX R

EXTRADITION

Treaty and exchanges of notes signed at London December 22, 1931

Senate advice and consent to ratification February 19, 1932

Ratified by the President of the United States March 3, 1932

Ratified by the United Kingdom July 29, 1932

Ratifications exchanged at London August 4, 1932

Proclaimed by the President of the United States August 9, 1932

Entered into force June 24, 1935

47 Stat. 2122; Treaty Series 849

TREATY

The President of the United States of America.

And His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India;

Desiring to make more adequate provision for the reciprocal extradition of criminals,

Have resolved to conclude a Treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States of America;

General Charles G. Dawes, Ambassador Extraordinary and Plenipotentiary of the United States of America at the Court of St. James;

And His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India;

for Great Britain and Northern Ireland;

The Right Honourable Sir John Simon, G.C.S.I., M.P., His Principal Secretary of State for Foreign Affairs;

who, having communicated their full powers, found in good and due form, have agreed as follows:

ARTICLE I

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 3, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE 2

For the purposes of the present Treaty the territory of His Britannic Majesty shall be deemed to be Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, and all parts of His Britannic Majesty's dominions overseas other than those enumerated in Article 14, together with the territories enumerated in Article 16 and any territories to which it may be extended under Article 17. It is understood that in respect of all territory of His Britannic Majesty as above defined other than Great Britain and Northern Ireland, the Channel Islands, and the Isle of Man, the present Treaty shall be applied so far as the laws permit.

For the purposes of the present Treaty the territory of the United States shall be deemed to be all territory wherever situated belonging to the United States, including its dependencies and all other territories under its exclusive administration or control.

ARTICLE 3

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age.
6. Indecent assault if such crime or offence be indictable in the place where the accused or convicted person is apprehended.
7. Kidnapping or false imprisonment.
8. Child stealing, including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Procuration: that is to say the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person provided that such crime or offence is punishable by imprisonment for at least one year or by more severe punishment.

11. Bigamy.

12. Maliciously wounding or inflicting grievous bodily harm.

13. Threats, by letter or otherwise, with intent to extort money or other things of value.

14. Perjury, or subornation of perjury.

15. Arson.

16. Burglary or housebreaking, robbery with violence, larceny or embezzlement.

17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.

18. Obtaining money, valuable security, or goods, by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

19. *(a)* Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b) Knowingly and without lawful authority making or having in possession any instrument, tool, or engine adapted and intended for the counterfeiting of coin.

20. Forgery, or uttering what is forged.

21. Crimes or offences against bankruptcy law.

22. Bribery, defined to be the offering, giving or receiving of bribes.

23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.

24. Crimes or offences or attempted crimes or offences in connection with the traffic in dangerous drugs.

25. Malicious injury to property, if such crime or offence be indictable.

26. *(a)* Piracy by the law of nations.

(b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.

27. Dealing in slaves.

Extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided that such participation be punishable by the laws of both High Contracting Parties.

ARTICLE 4

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the territories of the High Contracting Party applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the territories of the High Contracting Party applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE 5

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution

or punishment has been acquired by lapse of time, according to the laws of the High Contracting Party applying or applied to.

ARTICLE 6

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE 7

A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE 8

The extradition of fugitive criminals under the provisions of this Treaty shall be carried out in the United States and in the territory of His Britannic Majesty respectively, in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed.

ARTICLE 9

The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for

trial, in case the crime or offence had been committed in the territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to.

ARTICLE 10

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the Power whose claim is earliest in date, unless such claim is waived.

ARTICLE 11

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the High Contracting Party applied to, or the proper tribunal of such High Contracting Party, shall direct, the fugitive shall be set at liberty.

ARTICLE 12

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the High Contracting Party granting the extradition.

ARTICLE 13

All expenses connected with the extradition shall be borne by the High Contracting Party making the application.

ARTICLE 14

His Britannic Majesty may accede to the present Treaty on behalf of any of his Dominions hereafter named – that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland – and India. Such accession shall be effected by a notice to that effect given by the appropriate diplomatic representative of His Majesty at Washington which shall specify the authority to which the requisition for the surrender of a fugitive criminal who has taken refuge in the Dominion concerned, or India, as the case may be, shall be addressed. From the date when such notice comes into effect the territory of the Dominion concerned or of India shall be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty.[1]

The requisition for the surrender of a fugitive criminal who has taken refuge in any of the above-mentioned Dominions or India, on behalf of which His Britannic Majesty has acceded, shall be made by the appropriate diplomatic or consular officer of the United States of America.

---

[1] The Treaty was made applicable from Aug. 30, 1935, to Australia (including Papua, Norfolk Island, and mandated territories of New Guinea and Naura) and Newfoundland. (It ceased to apply to Newfoundland, however, when Newfoundland entered the Confederation of Canada on Mar. 31, 1949.) It was also made applicable to Burma from Nov. 1, 1941, and to India from Mar. 9, 1942.

Either High Contracting Party may terminate this Treaty separately in respect of any of the above-mentioned Dominions or India. Such termination shall be effected by a notice given in accordance with the provisions of Article 18.

Any notice given under the first paragraph of this Article in respect of one of His Britannic Majesty's Dominions may include any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, and which is being administered by the Government of the Dominion concerned; such territory shall, if so included, be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty. Any notice given under the third paragraph of this Article shall be applicable to such mandated territory.

ARTICLE 15

The requisition for the surrender of a fugitive criminal who has taken refuge in any territory of His Britannic Majesty other than Great Britain and Northern Ireland, the Channel Islands, or the Isle of Man, or the Dominions or India mentioned in Article 14, shall be made to the Governor, or chief authority, of such territory by the appropriate consular officer of the United States of America.

Such requisition shall be dealt with by the competent authorities of such territory; provided, nevertheless, that if an order for the committal of the fugitive criminal to prison to await surrender shall be made, the said Governor or chief authority may, instead of issuing a warrant for the surrender of such fugitive, refer the matter to His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 16

This Treaty shall apply in the same manner as if they were Possessions of His Britannic Majesty to the following British Protectorates, that is to say, the Bechuanaland Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zazibar, and to the following territories in respect to which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, that is to say, Cameroons under British mandate, Togoland under British mandate, and the Tanganyika Territory.

ARTICLE 17

If after the signature of the present Treaty it is considered advisable to extend its provisions to any British Protectorates other than those mentioned in the preceding Article or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, other than those mandated territories mentioned in Articles 14 and 16, the stipulations of Articles 14 and 15 shall be deemed to apply to such Protectorates or States or mandated territories from the date and in the manner prescribed in the notes to be exchanged for the purpose of effecting such extension.[2]

---

[2] The treaty was made applicable from June 24, 1935, to Palestine and Transjordan (see exchanges of notes, below); from July 31, 1939, to the Federated Malay States (Negri, Sembilan, Pahang, Perak and Sebangor), Brunei and North Borneo; and from Aug. 1, 1966, to Tonga.

ARTICLE 18

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

In the absence of an express provision to that effect, a notice given under the first paragraph of this Article shall not affect the operation of the Treaty as between the United States of America and any territory in respect of which notice of accession has been given under Article 14.

The present Treaty shall be ratified and the ratifications shall be exchanged at London as soon as possible.

On the coming into force of the present treaty the provisions of Article 10 [X] of the treaty of the 9th August, 1842,[3] of the convention of the 12th July, 1889,[4] of the supplementary Convention of the 13th December, 1900,[5] and of the supplementary Convention of the 12th April, 1905,[6] relative to extradition, shall cease to have effect, save that in the case of each of the Dominions and India, mentioned in Article 14, those provisions shall remain in force until such dominion or India shall have acceded to the present treaty in accordance with Article 14 or until replaced by other treaty arrangements.

---

[3] TX 119, sale, p. 88.

[4] TX 139, sale, p. 211.

[5] TX 391, sale, p. 236.

[6] TX 458, sale, p. 272.

In faith whereof the above-named plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate at London this twenty-second day of December, 1931.

CHARLES G. DAWS [SEAL]

JOHN SIMON [SEAL]

EXCHANGES OF NOTES

The Secretary of State for Foreign Affairs to the American Ambassador

FOREIGN OFFICE, S.W. 1.
22ND December, 1931

YOUR EXCELLENCY,

With reference to Article 17 of the Extradition Treaty between His Majesty The King of Britain, Ireland and the British Dominions beyond the Seas and the President of the United States of America, signed this day at London, I have the honour to inform Your Excellency that His Majesty's Government in the United Kingdom desire that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Palestine (excluding Transjordan).

2. I have accordingly the honour to enquire whether the United States Government agree with this proposal. In this event the present note and Your Excellency's reply to that effect will be regarded as placing on record the agreement arrived at in the matter.

I have the honour to be, with the highest consideration,

Your Excellency's obedient Servant,

JOHN SIMON

His Excellency

General CHALRES G. DAWES, C.B.,

Etc., etc., etc.

The American Ambassador to the Secretary of State for Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA
LONDON, *December 22, 1931*

SIR:

With reference to Article 17 of the Extradition Treaty between the President of the United States of America and His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas, signed this day at London, I have the honor to inform you that the Government of the United States of America is agreeable to the proposal of His Majesty's government in the United Kingdom that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Palestine (excluding Transjordan).

I have the honor to be, with the highest consideration, Sir,

Your most obedient, humble Servant,

CHARLES G. DAWES

The Right Hon
Sir JOHN SIMON, G.C.S.I., *etc., etc., etc.,*
Foreign Office, S.W. 1.

The Secretary of State for Foreign Affairs to the American Ambassador

FOREIGN OFFICE, S.W. 1.

22nd December, 1931

YOUR EXCELLENCY

With reference to Article 17 of the Extradition Treaty between His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas and the President of the United States of America, signed this day at London, I have the honour to inform Your Excellency that His Majesty's Government in the United Kingdom desire that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Transjordan.

2. I have accordingly the honour to enquire whether the United States Government agree with this proposal. In this event the present note and Your Excellency's reply to that effect will be regarded as placing on record the agreement arrived at in the matter.

I have the honour to be, with the highest consideration,

Your Excellency's obedient Servant,

JOHN SIMON

His Excellency

General CHARLES G. DAWES, C.B.,

etc., etc., etc.

The American Ambassador to the Secretary of State for Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA

LONDON, *December 22, 1931*

SIR:

With referenced to Article 17 of the Extradition Treaty between the President of the United States of America and His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas, signed this day at London, I have the honor to inform you that the Government of the United States of America is agreeable to the proposal of His Majesty's Government in the United Kingdom that the provisions of the above mentioned Treaty shall, as from the date of its entry into force, be applicable to Transjordan.

I have the honor to be, with the highest consideration, Sir,

Your most obedient, humble Servant,

CHARLES G. DAWES

The Right Hon

Sir JOHN SIMON, G.C.S.I., *etc., etc., etc.,*

Foreign Office, S.W. 1.

APPENDIX S
Extradition Act, 1972
(ACT XXI of 1972)

An Act to consolidate and amend the law relating to the extradition of fugitive offenders

25th September 1972

Whereas it is expendient [sic] to consolidate and amend the law relating to the extradition of fugitive offenders:

It is hereby enacted as follows: –

CHAPTER I – PRELIMINARY

1. *Short title, extent commencement and application – (1)* This Act may be called the Extradition act, 1972.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

(4) It shall apply in relation to the return of persons to and to persons returned from, –

(a) a treaty State, subject to a declaration under section 3, if any; and

(b) a foreign State not being a treaty State, subject to a direction under section 4.

2. *Definition* – (1) In this Act, unless there is anything repugnant in the subject or context…–

(a) "extradition offence" means an offence the act of omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of, Pakistan, would constitute an offence against the law of Pakistan and also –

(i) in the case of treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State; and

(ii) in the case of a foreign State not being a treaty State, an offence specified in a direction issued under section 4;

(b) "extradition treaty" means a treaty or agreement between Pakistan and a foreign State for the extradition to or from such State of a person accused or convicted of an extradition offence;

(c) "foreign State" includes every constituent part, colony or dependency of such State;

(d) "fugitive offender" means the person who, being accused or convicted of an extradition offence is, or is suspected to be, in any part of Pakistan;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "treaty State" means a foreign State with which an extradition treaty is for the time being in operation.

(2) In determining for the purposes of this Act whether an offence against the law of a foreign State falls within a description set out in the Schedule, any special intent or state or mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded.

3. *Treaty State* – (1) As soon as may be after the commencement of this Act, the Federal Government shall publish in the official Gazette a list of the foreign State with which an extradition treaty is in operation, specifying in respect of each such

(3) A declaration under subsection (2) in relation to foreign State shall specify the offences persons accused of which are, under the extradition treaty with that State, to be returned to or from that State and may provide that this Act shall apply in relation to that State with such modification as may be set out therein; and the provision of this Act shall have effect accordingly.

4. *Application of Act to non-treaty States* – (1) Where the Federal Government considers it expedient that the persons who, being accused or convicted of offence at places within, or within the jurisdiction of, a foreign State, are or are suspected to be in Pakistan should be returned to that State, notwithstanding that there is no extradition treaty with that state, it may, by notification in the official Gazette, direct that the provisions of this Act, shall, with respect to such offences and subject to such modifications, exceptions, conditions and qualifications, if any, as may be specified therein, have effect in relation to that State.

(2) Where a direction under subsection (1) in relation to a foreign State is in force, the provisions of this Act shall, with respect to the offences specified in that direction; have effect in relation to such State as if it were a treaty State.

CHAPTER II – SURRENDER OF FUGITIVE OFFENDERS

5. *Liability of fugitive offenders to be surrendered.* – (1) Subject to the provisions of subsection (2), every fugitive offender shall be liable to be apprehended and surrendered in the manner provided in this act, whether the offence in respect of which his surrender is sought was committed before or after the commencement of this Act and whether or not a Court in Pakistan has jurisdiction to try that offence.

(2) No fugitive offender shall be surrendered –

(a) if the offence in respect of which his surrender is sought in a political character or if it is shown to the satisfaction of the Federal Government or of the Magistrate or Court before whom he may be produced that the requisition for his surrender has, in fact been made with a view to his being tried or punished for an offence of a political character;

(b) if the offence in respect of which his surrender is sought is punishable with death or with imprisonment for life or a term which is not less than twelve months;

(c) if the prosecution for the offence in respect of which the surrender sought is, according to the law of the State asking for the surrender, barred by time;

(d) if there is no provision in the law of, or in the extradition treaty with the State asking for the surrender that the fugitive offender shall not, until he has been restored or has had an opportunity of returning to Pakistan, be detained or tried in that State for any offence committed prior to his surrender other than the extradition offence proved by the facts on which the surrender is based;

(e) if it appears to the Federal Government that he is accused or alleged to have been convicted of such no offence that if he were charged with the offence in Pakistan he would be entitled to be discharged under any law relating to previous acquittal or conviction;

(f) if he has been accused of some offence in Pakistan, not being the offence for which his surrender is sought, or is undergoing sentence under any conviction in Pakistan, until after he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise;

(g) if it is shown to the satisfaction of the Federal Government or of the Magistrate or Court before whom he may be produced that he might if surrendered by prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

6. *Requisition for surrender of fugitive offender* – A requisition for the surrender of a fugitive offender shall be made to the Federal Government –

(a) by a diplomatic representative in Pakistan of the State asking for the surrender; or

(b) by the Government of the State asking for the surrender through the diplomatic representative of Pakistan in that State; or

(c) in such other manner as may have been settled by arrangement between the Federal Government and the Government of the State asking for the surrender.

7. *Order of Magistrial enquiry* – Where a requisition is made under section 6, the Federal Government may, if it thinks fit, issue an order to enquire into the case to any Magistrate of the first class who would have had jurisdiction to enquire into the extradition offence to which the requisition relates if it had been an offence committed within the local limits of his jurisdiction.

8. *Magisterial enquiry* – (1) On receipt of an order under section 7, the Magistrate shall issue a summon or a warrant for the arrest of the fugitive offender according as the cause appears to be one in which according to the law of Pakistan a summon or warrant would ordinarily issue.

(2) When the fugitive offender appears or is brought before him, the Magistrate shall enquire into the case in the same

manner, and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of Session and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive offender, including any evidence to show that the offence of which the fugitive offender is accused or alleged to have been convicted is an offence of a political character or is not an extradition offence.

9. *Receipt in evidence of exhibits, depositions, etc.* – (1) In any proceeding against a fugitive offender under this Act, exhibits and depositions, whether or not they are received or taken in the presence of the person against whom they are used, and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.

(2) Warrants, depositions or statements on oath which purport to have been issued, received or taken by any Court of Justice outside Pakistan, or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed dully authenticated –

(a) if the warrant purports to be signed by a Judge, Magistrate, or officer of the State where the same was issued or acting in or for such State;

(b) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require;

(c) if the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge,

Magistrate or officer of the State where the conviction took place or acting in or for such State; and

(d) if the warrant, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State where the same were respectively issued, taken or given.

(3) For the purposes of the section, "warrant" includes any judicial document authorising the arrest of any person accused or convicted of an offence.

10. *Magistrate to report after the enquiry* – If, after the enquiry under section 8, the Magistrate is of opinion –

(a) that a *prima facie* case has not been made out in support of the requisition for surrender of the fugitive offender, he shall discharge the fugitive offender and make a report to that effect to the Federal Government;

(b) that a *prima facie* case has been made out in support of such requisition, he shall –

(i) report the result of his enquiry to the Federal Government;

(ii) forward, together with such report, any written statement which fugitive offender may desire to submit for the consideration of the Federal Government; and

(iii) subject to any provision relating to bail, commit the fugitive offender prison to await the orders of the Federal Government.

11. *Removal and delivery of the fugitive offender* – If, upon receipt of report and statement under clause (b) of section 10, the Federal Government is of opinion that the fugitive offender

ought to be surrendered, it may by warrant for the custody and removal of the fugitive offender and for the delivery at a place and to a person to be named in the warrant:

Provided that the fugitive offender shall not be so delivered until after the expiration of fifteen days from the date he has been taken in custody by such warrant.

12. *Discharge of person apprehended if not surrendered within two months* – If a fugitive offender who, in pursuance of this Act, has been taken into custody to await his surrender is not conveyed out of Pakistan within two months after such committial, the High Court, upon application made to it by or on behalf of the fugitive offender and upon proof that reasonable notice of the intention to make such application has been given to the Federal Government, may order such prisoner to be discharged unless sufficient cause is shown to the contrary.

13. *Powers to the Federal Government to discharge a fugitive offender* – If it is appears to the Federal Government that by reason of the trivial nature of the case or by reason of the application for the surrender of a fugitive offender not being made in good faith or in the interest of justice or for any other reason it would be unjust or inexpedient to surrender the fugitive offender, it may, by summons or warrant issued under this Act to be cancelled and the fugitive offender, if he is in custody or under detention, to be discharged.

14. *Simultaneous requisitions* – If requisitions for the surrender of a fugitive offender are received from more than one treaty State, the Federal Government may, having regard to the circumstances of the case, surrender the fugitive offender to such State as it may think fit.

would be unjust or inexpedient to surrender the fugitive offender, it may, by summons or warrant issued under this Act to be cancelled and the fugitive offender, if he is in custody or under detention, to be discharged.

14. *Simultaneous requisitions* – If requisitions for the surrender of a fugitive offender are received from more than one treaty State, the Federal Government may, having regard to the circumstances of the case, surrender the fugitive offender to such State as it may think fit.

CHAPTER III – SURRENDER TO PAKISTAN OF PERSONS ACCUSED OF EXTRADITION OFFENCES

15. *Requisition for surrender of persons to Pakistan* – A requisition for the surrender to Pakistan of a person who, being accused or convicted of an extradition offence was or is suspected to be in treaty State may be made by the Federal Government –

(a) to the diplomatic representative in Pakistan of that State;

(b) to the Government of that State through the diplomatic representatives of Pakistan in that State; or

(c) in such other manner as may have been settled by arrangement between the Federal Government and the Government of that State.

16. *A person surrendered by a treaty State not to be tried for previous offences* -- A person surrendered by a treaty State pursuant of a requisition under section 15 shall not, until he has been restored or has had an opportunity of returning to that State, be tried in Pakistan for an offence committed prior to the surrender, other than the extradition offence proved by the facts on which the surrender is based.

(b) he is acquitted or discharged on his trial for that offence.

CHAPTER IV – MISCELLANEOUS

18. *Jurisdiction as to offences committed at sea or in air* – Where the offence in respect of which the surrender of a fugitive offender is sought was committed on board any vessel on the high seas or any aircraft in the air outside Pakistan or the Pakistan territorial waters and such vessel or aircraft comes into any port or aerodrome of Pakistan with the fugitive offender on board, the Federal Government and any Magistrate having jurisdiction in such port or aerodrome may exercise the powers conferred on it or him by this Act.

19. *Release of persons arrested on bail* – The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to bail shall apply to a fugitive offender arrested or detained under this Act in the same manner as they would apply if he were accused of committing in Pakistan the offence of which he is accused or has been convicted; and in relation to such bail the Magistrate before whom he is brought shall have, as far as may be, the same powers and jurisdiction as a Court of Session under that Code.

20. *Property found on fugitive offender* -- Everything found in the possession of a fugitive offender at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive offender on his surrender, subject to the rights, if any, of third parties with respect thereto.

21. *Lawfulness of custody and re-taking under warrant issued under Act* – It shall be lawful for any person to

whom a warrant is directed in pursuance of the provisions of this Act to receive, hold in custody and convey the fugitive offender mentioned in the warrant to the place named in the warrant, and, if such offender escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of Pakistan may be re-taken upon an escape.

22. *Power to make rules* – (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: –

(a) the form in which a requisition for the surrender of a fugitive offender may be made;

(b) the removal of fugitive offenders apprehended or in custody under this Act and their control and maintenance until such time as they are handed over to the persons entitled to receive them;

(c) the seizure and disposition of any property which is the subject of or required for proof of, any alleged offence with respect to which this Act applies; and

(d) the form and manner in which the Magistrate may be required to make his report to the Federal Government under this Act.

23. *Power to amend the Schedule* – The Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

24. *Repeal* – The Extradition Act, 1903 (XV of 1903), is hereby repealed.

THE SCHEDULE

[See section 2(1)(a)]

EXTRADITION OFFENCES

1. Culpable homicide.

2. Maliciously or wilfully wounding grievous bodily harm.

3. Rape.

4. Procuring or trafficking in women or young persons for immoral purposes.

5. Kidnapping, abduction or false imprisonment or dealing in slaves.

7. Bribery.

8. Perjury or subornation or perjury or conspiring to defeat the course of justice.

9. Arson.

10. An offence concerning counterfeit currency.

11. An offence against the law relating to forgery.

12. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences receiving stolen property or any other offence in respect of property involving fraud.

13. Burglary, house-breaking or any similar offence.

14. Robbery.

15. Blackmail or extortion by means of threats or by abuse of authority.

16. An offence against bankruptcy law or company law.

17. Malicious or wilful/damage to property.

18. Acts done with the intention of endangering vehicles, vessels or aircraft.

19. An offence against the law relating to dangerous drugs or narcotics.

20. Piracy.

21. Revolt against the authority of the master of a ship or the commander of an aircraft.

22. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals.

23. Aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the aforesaid offences.

APPENDIX T
UNITED NATIONS CONFERENCE ON CONSULAR RELATIONS

VIENNA CONVENTION ON CONSULAR RELATIONS

The States Parties to the present Convention,

Recalling that consular relations have been established between peoples since ancient times,

Having in mind, the Purposes and Principles of the Charter of the United Nations[1] concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature of 10 April 1961,[2]

Believing, that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges an immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

Affirming, that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

Have agreed, as follows: . . .

Article 36: Communication and Contact with Nationals of the Sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers

shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action; 2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended...

APPENDIX U

28 CFR Ch. XVI

Subpart B--Production or Disclosure in Federal and State Proceedings

16.21 Purpose and scope.

16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

16.25 Final action by the Deputy or Associate Attorney General.

16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.

16.28 Procedure in the event of an adverse ruling.

16.29 Delegation by Assistant Attorneys General.

Appendix to Subpart B--Redelegation of Authority to the Deputy Assistant Attorney General for Litigation, Antitrust Division, To Authorize Production or Disclosure of Material or Information

Subpart C--Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

Sec. 16.21 Purpose and scope.

(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:

(1) In all federal and state proceedings in which the United States is a party; and

(2) In all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a "demand") of a court or other authority is issued for such material or information.

(b) For purposes of this subpart, the term employee of the Department includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. Attorneys, U.S. Marshals, U.S. Trustees and members of the staffs of those officials.

(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prosecutive, or regulatory agencies.

(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any

right or benefit, substantive or procedural, enforceable at law by a party against the United States.

Sec. 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

(a) In any federal or state case or matter in which the United States is not a party, no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official in accordance with Secs. 16.24 and 16.25 of this part.

(b) Whenever a demand is made upon an employee or former employee as described in paragraph (a) of this section, the employee shall immediately notify the U.S. Attorney for the district where the issuing authority is located. The responsible United States Attorney shall follow procedures set forth in Sec. 16.24 of this part.

(c) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the responsible U.S. Attorney. Any authorization for testimony by a present or former employee of the Department shall be limited to the scope of the demand as summarized in such statement.

(d) When information other than oral testimony is sought by a demand, the responsible U.S. Attorney shall request a summary of the information sought and its relevance to the proceeding.

Sec. 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

(a) Every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the ``originating component'' as defined in Sec. 16.24(a) of this part, to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by any attorney, or investigator of the Department of Justice, as such attorney shall deem necessary or desirable to the discharge of the attorney's official duties: Provided, Such an attorney shall consider, with respect to any disclosure, the factors set forth in Sec. 16.26(a) of this part: And further provided, An attorney shall not reveal or furnish any material, documents, testimony or information when, in the attorney's judgment, any of the factors specified in Sec. 16.26(b) exists, without the express prior approval by the Assistant Attorney General in charge of the division responsible for the case or proceeding, the Director of the Executive Office for United States Trustees (hereinafter referred to as "the EOUST""), or such persons' designees.

(b) An attorney may seek higher level review at any stage of a proceeding, including prior to the issuance of a court order, when the attorney determines that a factor specified in Sec. 16.26(b) exists or foresees that higher level approval will be required before disclosure of the information or testimony in question. Upon

referral of a matter under this subsection, the responsible Assistant Attorney General, the Director of EOUST, or their designees shall follow procedures set forth in Sec. 16.24 of this part.

(c) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

Sec. 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

(a) Whenever a matter is referred under Sec. 16.22 of this part to a U.S. Attorney or, under Sec. 16.23 of this part, to an Assistant Attorney General, the Director of the EOUST, or their designees (hereinafter collectively referred to as the ``responsible official"), the responsible official shall immediately advise the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person (hereinafter collectively referred to as the ``originating component"), or that official's designee. In any instance in which the responsible official is also the official in charge of the originating component, the responsible official may perform all functions and make all determinations that this regulation vests in the originating component.

(b) The responsible official, subject to the terms of paragraph (c)

of this section, may authorize the appearance and testimony of a present or former Department employee, or the production of material from Department files if:

(1) There is no objection after inquiry of the originating component;

(2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in Sec. 16.26(a) of this part; and

(3) None of the factors specified in Sec. 16.26(b) of this part exists with respect to the demanded disclosure.

(c) It is Department policy that the responsible official shall, following any necessary consultation with the originating component, authorize testimony by a present or former employee of the Department or the production of material from Department files without further authorization from Department officials whenever possible: Provided, That, when information is collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of the Department or by the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require that the originating component obtain the division's or the EOUST's approval before authorizing a responsible official to disclose such information. Prior to authorizing such testimony or production, however, the responsible official shall, through negotiation and, if necessary, appropriate motions, seek to limit the demand to information, the disclosure of which would not be inconsistent with the considerations specified in Sec. 16.26 of this part.

(d)(1) In a case in which the United States is not a party, if the

responsible U.S. attorney and the originating component disagree with respect to the appropriateness of demanded testimony or of a particular disclosure, or if they agree that such testimony or such a disclosure should not be made, they shall determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney shall notify the Director of the EOUST or the Assistant Attorney General in charge of the division responsible for such litigation or investigation, who may:

(i) Authorize personally or through a Deputy Assistant Attorney General, the demanded testimony or other disclosure of the information if such testimony or other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment or in the judgment of the Director of the EOUST, is consistent with the factors specified in Sec. 16.26(a) of this part, and none of the factors specified in Sec. 16.26(b) of this part exists with respect to the demanded disclosure;

(ii) Authorize, personally or by a designee, the responsible official, through negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which, through testimony or documents, considerations specified in Sec. 16.26 of this part, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

(iii) If, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Director of the EOUST or the Assistant or Deputy Assistant Attorney General does not authorize the demanded testimony or other disclosure, refer the matter, personally or through a Deputy Assistant Attorney

General, for final resolution to the Deputy or Associate Attorney General, as indicated in Sec. 16.25 of this part.

(2) If the demand for testimony or other disclosure in such a case does not involve information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component shall decide whether disclosure is appropriate, except that, when especially significant issues are raised, the responsible official may refer the matter to the Deputy or Associate Attorney General, as indicated in Sec. 16.25 of this part. If the originating component determines that disclosure would not be appropriate and the responsible official does not refer the matter for higher level review, the responsible official shall take all appropriate steps to limit the scope or obtain the withdrawal of a demand.

(e) In a case in which the United States is a party, the Assistant General or the Director of the EOUST responsible for the case or matter, or such persons' designees, are authorized, after consultation with the originating component, to exercise the authorities specified in paragraph (d)(1) (i) through (iii) of this section: Provided, That if a demand involves information that was collected, assembled, or prepared originally in connection with litigation or an investigation supervised by another unit of the Department, the responsible official shall notify the other division or the EOUST concerning the demand and the anticipated response. If two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement, or the Director of the EOUST and the appropriate Assistant

Attorney General, may refer the matter to the Deputy or Associate Attorney General, as indicated in Sec. 16.25(b) of this part.

(f) In any case or matter in which the responsible official and the originating component agree that it would not be appropriate to authorize testimony or otherwise to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. After taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand, the responsible official shall refer the matter to the Deputy or Associate Attorney General, as indicated in Sec. 16.25 of this part.

(g) In any case or matter in which the Attorney General is personally involved in the claim of privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

Sec. 16.25 Final action by the Deputy or Associate Attorney General.

(a) Unless otherwise indicated, all matters to be referred under Sec. 16.24 by an Assistant Attorney General, the Director of the EOUST, or such person's designees to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the matter is referred personally by or through the designee of an Assistant Attorney General who is within the general supervision of the Deputy Attorney General, or (2) to the Associate Attorney General, in all other cases.

(b) All other matters to be referred under Sec. 16.24 to the Deputy

or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the originating component is within the supervision of the Deputy Attorney General or is an independent agency that, for administrative purposes, is within the Department of Justice, or (2) to the Associate Attorney General, if the originating component is within the supervision of the Associate Attorney General.

(c) Upon referral, the Deputy or Associate Attorney General shall make the final decision and give notice thereof to the responsible official and such other persons as circumstances may warrant.

Sec. 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cv.P., Rule 6(e);

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal a confidential source or informant,

unless the investigative agency and the source or informant have no objection,

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired,

(6) Disclosure would improperly reveal trade secrets without the owner's consent.

(c) In all cases not involving considerations specified in paragraphs (b)(1) through (b)(6) of this section, the Deputy or Associate Attorney General will authorize disclosure unless, in that person's judgment, after considering paragraph (a) of this section, disclosure is unwarranted. The Deputy or Associate Attorney General will not approve disclosure if the circumstances specified in paragraphs (b)(1) through (b)(3) of this section exist. The Deputy or Associate Attorney General will not approve disclosure if any of the conditions in paragraphs (b)(4) through (b)(6) of this section exist, unless the Deputy or Associate Attorney General determines that the administration of justice requires disclosure. In this regard, if disclosure is necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, consideration shall be given to:

(1) The seriousness of the violation or crime involved,

(2) The past history or criminal record of the violator or accused,

(3) The importance of the relief sought,

(4) The importance of the legal issues presented,

(5) Other matters brought to the attention of the Deputy or Associate Attorney General.

(d) Assistant Attorneys General, U.S. Attorneys, the Director of the EOUST, U.S. Trustees, and their designees, are authorized to issue instructions to attorneys and to adopt supervisory practices, consistent with this subpart, in order to help foster consistent application of the foregoing standards and the requirements of this subpart.

Sec. 16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required. If response to a demand is required before the instructions from the appropriate Department official are received, the responsible official or other Department attorney designated for the purpose shall appear and furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

Sec. 16.28 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with Sec. 16.27 of this chapter pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions rendered in accordance with Secs. 16.24 and 16.25 of this part not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall, if so directed by the responsible Department official, respectfully decline to comply

with the demand. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

Sec. 16.29 Delegation by Assistant Attorneys General.

With respect to any function that this subpart permits the designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate their authority, in any case or matter or any category of cases or matters, to subordinate division officials or U.S. attorneys, as appropriate.

Appendix to Subpart B--Redelegation of Authority to the Deputy Assistant Attorney General for Litigation, Antitrust Division, To Authorize Production or Disclosure of Material or Information

1. By virtue of the authority vested in me by 28 CFR 16.23(b)(1) the authority delegated to me by that section to authorize the production of material and disclosure of information described in 28 CFR 16.21(a) is hereby redelegated to the Deputy Assistant Attorney General for Litigation, Antitrust Division.

2. This directive shall become effective on the date of its publication in the Federal Register.

[Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

Subpart C--Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

Source: Order No. 556-73, 38 FR 32806, Nov. 28, 1973, unless otherwise noted.

APPENDIX V

32 CFR Ch. XIX

Part 1905 - PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERALSTATE OR LOCAL GOVERNMENT ENTITIES OF COMPETENT JURISDICTION

Sec.

1905.1 Scope and Purpose

1905.2 Definitions

1905.3 General

1905.4 Procedure for Production

AUTHORITY: 5 U.S.C. 403(d)(3); 50 U.S.C. 403g; United States ex rel. *Touhy v. Ragen*, 340 U.S. 462 (1951); E.O. 12333 §§1.8(i), 1.5(h), 3.2;E.O. 12356; U.S. v. Snepp, 444 U.S. 507 (1980).

SOURCE: 56 FR 41459, August 21,1991, unless otherwise noted.

§ 1905.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of (a) material contained in the files of CIA, (b) information relating to or based upon material contained in the files of CIA, and (c) information acquired by any person while such person was an employee of CIA as part of the performance of that person's official duties or because of that person's association with CIA.

§ 1905.2 Definitions.

For the purpose of this part:

(a) *CIA or Agency* means the Central Intelligence Agency and includes all staff elements of the Director of Central Intelligence.

(b) *Demand* means any subpoena, order, or other legal summons (except garnishment orders) that is issued by a federal, state or local governmental entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

(c) *Employee* means any officer, any staff, contract, or other employee of CIA; any person including independent contractors associated with or acting on behalf of CIA; and any person formerly having such a relationship with CIA.

(d) *Production or produce* means the disclosure of:

(1) Any material contained in the files of CIA; or

(2) Any information relating to material contained in the files of CIA, including but not limited to summaries of such information or material, or opinions based on such information or material;

(3) Any information acquired by persons while such persons were employees of CIA as part of the performance of their official duties or because of their official status or association with CIA;

in response to a demand upon an employee of CIA.

(e) *General Counsel* includes the Deputy General Counsel of Acting General Counsel.

§ 1905.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1905.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify the Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505 (703/874-3118;which shall follow the procedures set forth in this section.

(b) The General Counsel of CIA and Deputy Directors of Heads of Independent Offices with responsibility for the information sought in the demand, or their designees, shall determine whether any information or materials may properly be produced in response to the demand, except that the Office of General Counsel may assert any and all legal defenses and objections to the demand available to CIA prior to the start of any search for information responsive to the demand. CIA may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by CIA has been made by the entity or person that issued the demand.

(c) CIA officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would be inconsistent with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods;

(iii) Disclosure would violate a specific CIA regulation or directive;

(iv) Disclosure would reveal classified information;

(v) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(vi) Disclosure would unduly interfere with the orderly conduct of CIA's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the CIA is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit, or if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the CIA Office of General Counsel.

(e) The Office of General Counsel shall be responsible for notifying the appropriate employees and other persons of all

decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, an attorney from the Office of General Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this Regulation and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate CIA officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

(g) If the court of other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with § 1905.4(g), or rules that the demand must be complied with irrespective of instructions rendered in accordance with this part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by the General Counsel of CIA, or designee, respectfully decline to comply with the demand under the authority of *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this Regulation.

(h) With respect to any function granted to CIA officials in his part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials

(i) Any nonemployee who receives a demand for the production or disclosure of CIA information acquired because of that person's association or contacts with CIA should notify CIA's

Office of General Counsel, Litigation Division (703/874-3118) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

APPENDIX W

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - - - - - - x

COMMONWEALTH OF VIRGINIA :

-vs- : CRIMINAL

: DOCKET NO. 79148

MIRA AIMAL KASI :

Defendant. :

- - - - - - - - - - x

Circuit Courtroom No. 5-G

Fairfax County Judicial Center

Fairfax, Virginia

Thursday, November 6, 1997

The above-entitled matter came on to be heard, with a Jury, before the HONORABLE J. HOWE BROWN, JR., Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, 4110 Chain Bridge Road, Fairfax, Virginia, beginning at 10:04 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

ROBERT F. HORAN, JR.

COMMONWEALTH'S ATTORNEY

On Behalf of the Defendant:

RICHARD GOEMANN, ESQUIRE

FRANK ROMANO, ESQUIRE

CRYSTAL A. MELEEN, ATTORNEY-AT-LAW

JUDITH BARGER, ATTORNEY-AT-LAW

CONTENTS

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
WILLIAM WHILDON	21	44	64	65
AGENT CHALKLEY	68	70	--	--
DR. FRANCES FIELD	72	79	97	--
AGENT DORSEY	99	--	--	--
STEVEN BITTLE	115	121	--	--
MARGERITE WARNER	125	149	--	--
THOMAS MARTIN	164	175	181	--
CLAUDE SERWIT	186	188	202	--
BRADLEY J. GARRETT	203	230	265	--

EXHIBITS

	FOR IDENTIFICATION	IN EVIDENCE
COMMONWEALTH'S EXHIBIT 31	24	28
COMMONWEALTH'S EXHIBIT 9	33	--
COMMONWEALTH'S EXHIBIT 35	--	38
COMMONWEALTH'S EXHIBIT 36	40	42
COMMONWEALTH'S EXHIBIT 37	42	44
COMMONWEALTH'S EXHIBIT 29	102	--
COMMONWEALTH'S EXHIBIT 30	103	--
COMMONWEALTH'S EXHIBIT 38,39	--	114

EXHIBITS CONT'D.

	FOR IDENTIFICATION	IN EVIDENCE
COMMONWEALTH'S EXHIBIT 40	--	119
COMMONWEALTH'S EXHIBIT 41	--	119
COMMONWEALTH'S EXHIBIT 29	--	162
COMMONWEALTH'S EXHIBIT 30	--	162
COMMONWEALTH'S EXHIBIT 42	--	175
COMMONWEALTH'S EXHIBIT 43	205	207
COMMONWEALTH'S EXHIBIT 44	226	227
DEFENSE EXHIBIT D	56	58
DEFENSE EXHIBIT E	88	88
DEFENSE EXHIBITS F,G,H,I	230	239

202

THE COURT: Next?

MR. HORAN: Special Agent Garrett.

Whereupon,

BRADLEY J. GARRETT

a witness, was called for examination by counsel on behalf of the Commonwealth, and, after having been duly sworn by the Clerk of the Court, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. HORAN:

Q State your full name, please, and your occupation.

A It's Bradley J. Garrett, G-A-R-R-E-T-T. I'm a special agent with the FBI.

Q How long have you been an agent with the FBI?

A Approximately 13 years.

Q What are your duties with the bureau?

A Primarily violent crime matters, homicides, kidnappings, assaults.

Q Directing your attention to January 25th of 1993, did you become involved in the investigation into the killings at the CIA on that day?

A I did.

Q And when and where did you first become involved?

A Approximately ten minutes after the event occurred, a little after 8:00 o'clock in the morning.

Q Did you go to the scene on that day?

A I did.

Q Do you know the Defendant, Mir Aimal Kasi?

A I do.

Q Did you see him on June 17th of 1997?

A I did.

Q Did you discuss the CIA killings with him on that day?

A I did.

Q Where did this discussion take place?

A Aboard an aircraft en route to the United States.

Q And had you ever discussed this matter with him prior to the discussion on the airplane on that day?

A No.

Q Had you ever tried to discuss this matter with him prior to that day?

A No.

Q Now, prior to the discussion on June 17th, did you advise him of any constitutional rights?

A I did.

Q Would you describe for His Honor and the jury the procedure that you followed?

A Yes, sir. There's an FBI form called an FD-395, which is an interrogation advice of rights form, that describes in detail a person's rights.

I read the form to Mr. Kansi, asked him if he

understood the form., he said he did. Then I had him look at the form, and he said that he wanted to talk to me, that he would waive his rights, that he did not want an attorney, and that he would talk to me at this time.

MR. HORAN: I'd ask that this be marked as Commonwealth's Exhibit 43.

(The document referred to above was marked Commonwealth's Exhibit Number 43, for identification.)

MR. HORAN: I want to show you this document that's marked Commonwealth's Exhibit Number 43 for identification and ask can you identify it.

(Whereupon, Mr. Horan handed a document to the Witness for his examination.)

THE WITNESS: Yes. This is the FD-395 form that I used.

BY MR. HORAN:

Q And are there any signatures on that form?

A There's three signatures. There is Mr. Kansi, who signed his name Aimal Kasi; there's my name; and Special Agent Shawn Joyce of the FBI.

Q Now, prior to the execution of that form, did you make any attempt to determine his knowledge of the English language?

A Yes, sir, I did.

Q And what was that?

A We talked approximately forty-five minutes about him coming to the United States, the timeframes that he came here, what he did in the United States, and talked briefly about what he did after he returned to Pakistan in '93.

Q Did he give you any indication of what kind of schooling he had?

A He told me he had a Masters in English.

Q Did he appear to have any difficulty communicating with you on that day?

A No, sir.

Q Did you have any trouble understanding him when he talked to you?

A No, sir.

Q Did there come any time in the portion of the explanation of the rights where he indicated a lack of knowledge of any of the words you were using?

A No.

MR. HORAN: Your Honor, I would offer this into evidence as Commonwealth's Exhibit Number 43.

THE COURT: Any objection to forty-three?

MR. GOEMANN: No, Your Honor.

THE COURT: It's received. Did you want it back?

(The document heretofore marked Commonwealth's Exhibit number 43, for identification, was received into evidence.)

MR. HORAN: Yes, sir. Thank you, Your Honor.

BY MR. HORAN:

Q Would you tell us what rights you advised him of?

A The form, interrogation advice of rights, is your rights. Maybe if I just read the form. "Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and

to have a lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

"Waiver of Rights. I have read this statement of my rights and understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Q Now, when you were giving him those rights, were you reading that form to him?

A That's correct.

Q And did you give him an opportunity to examine the form before he signed it?

A I did.

Q And did he appear to read the form?

A Yes.

Q Now, prior to the signing of that form, did you

promise him any leniency or any form of reward for giving you a statement?

A Absolutely not.

Q Did you threaten him In any way?

A No.

Q Did you give any Indication at all that if he didn't give you a statement something bad would happen to him?

A None.

Q Once he executed the waiver on that form, did he in fact discuss the CIA killings with you?

A He did.

Q Before I get to what he told you at that time, do you know who arrested this Defendant?

A He was taken into custody by myself and three other FBI agents.

Q And how was that arrest made?

A It was made in a hotel room in a foreign country.

Q And would you just describe the arrest that you actually made?

A We had previously received some information about what he might do. We went to this particular

location. We went to his room. There was a knock at the door. He opened the door. We quickly entered his room and arrested him at that point.

Q And would you describe what took place then?

A When we came in the room, Mr. Kansi started screaming and we had to wrestle with him a while around the room before we could finally get handcuffs on him.

Eventually, we had to actually gag him because he wouldn't quit screaming, two to three minutes after we were in the room perhaps.

Q How many people were involved all together in this incident?

A Four -- four FBI agents.

Q They were all Americans?

A Yes, sir.

Q What kind of hotel room were you dealing with?

A It was a small hotel room, one room and a bathroom.

Q Did you have any conversation with him in the course of this arrest procedure?

A Well, we kept asking him to quit screaming, and eventually he did quit screaming, and I asked him what's your name.

Q What did he say?

A And he said, Fuck you.

Q What happened then?

A I had made the decision that I wanted to make sure that it absolutely was him. So I took a left thumb print.

I had an ink pad and I actually put ink on his left thumb and put it on a piece of paper and looked at his print and compared the prints I had with me -- of know prints of him -- and determined it was in fact him.

MR. ROMANO: Your Honor, I'm going to object. This witness has not been qualified as one of the previous witnesses was qualified as to his ability to compare prints.

That conclusion, that it's suppose to be for the purposes of fact is objectionable.

MR. HORAN: Your Honor, that goes to its weight rather than its admissibility.

THE COURT: I overrule the objection. He's simply testifying to what he did, the effect of it. You can argue or cross examine with regard to it.

BY MR. HORAN:

Q Now, where was he taken after the arrest?

A He was taken out of this hotel, placed in a vehicle, transported to a plane, and then flown to another location.

Q Was he in any restraints at that time?

A He was.

Q What kind of restraints were they?

A Handcuffs, ankle cuffs, and a covering over his face.

Q You then took a plane ride. How long did that plane ride take?

A Approximately an hour.

Q And once that plane landed, where did you go?

A We sat on the ground about an hour and a half. And then after about an hour and a half we went to a holding facility, where he was kept for a couple of days.

Q Now, during the period of time that he was in that holding facility, did you have any discussions at all with him about this case?

A Only about his well-being.

Q And while he was in this holding facility, did you or any of the other FBI agents have the ability to observe him during that period of time?

A Continually.

Q You did that in shifts?

A We did.

Q And what was the purpose of keeping him constantly under surveillance during that time?

A Two-fold. One, that nobody talked to him; and secondly, that he was humanely treated.

Q Did you do any examinations of him to see whether or not he was all right?

A We did.

Q And what would they have been?

A Myself and another agent are emergency medical technicians and we took his pulse. We asked him how he felt.

He got scraped up a little bit during the arrest on his back and on his elbow. We had to raise his shirt up, asked him how he felt, if he wanted any medication. He said he felt fine and there weren't any problems.

Q And what was the date that you actually took him into custody?

A June the 15th.

Q And approximately what time of day on June the 15th?

A A little after 4:00 a.m.

Q And approximately what time did you get him to this detention facility?

A 8:30 a.m., the same day.

Q And once you had him in the detention facility, was he allowed to eat?

A He was, yes.

Q And was that done the entire time he was in the facility?

A Yes.

Q Did he sleep while he was in that facility?

A He did.

Q Did anyone harass him or bother him while he was in that facility?

A No.

MR. ROMANO: Your Honor, I'm going to object. The agent testified that they did this in shifts. He can really only testify to whatever shifts he was doing the observation.

THE COURT: From his observation.

BY MR. HORAN:

Q From your observation. Did you receive any reports from any of your compatriots over there of any

mistreatment of this Defendant?

A No. I specifically asked them to tell me anything that went on. We had a discussion in fact on the way back and they said no one approached him.

Q Eventually, were you allowed to take him out of that detention facility?

A After two days.

Q How did that come about?

A I received information from the U.S. official at the U.S. Embassy in Pakistan that he was going to be released and that we could take him back on the morning of June 17th.

Q And how long did it take you to get to the airport you took him to?

A Approximately thirty minutes.

Q What was his form of restraint from the time you took him out of the detention facility to the time he got onto the airplane?

A He was placed in handcuffs, ankle cuffs, and a cover was placed over his face.

Q Were you in favor of putting a covering over his face?

MR. ROMANO: Objection, Your Honor. It's

speculation. It's a conclusion. It's just not --

THE COURT: I sustain the objection to whether he was in favor or not. That's not relevant to the issues.

BY MR. HORAN:

Q Are you the one who asked that he have a covering over his head?

A No.

Q Once you got on the airplane, would you describe how the airplane was set up?

A The airplane was set up in a manner that as you walk into the back of the airplane, there was actually a compartment slid into the plane, no windows.

In that compartment were twelve seats, airline seats, and myself and six FBI agents were the only people in that component inside the plane the entire plane trip.

Q And where did you put him on the plane?

A He was obviously in there with us. He was in the back set of seats. You had two seats facing two seats, three sets of those.

Q At the time you advised him of his constitutional rights, where was he seated with relation to you?

A Directly across. He was facing the back of the

plane. I was facing the front of the plane, face to face.

Q And were there any other agents there during the advice of rights?

A One other agent.

Q And who was that?

A Special Agent Shawn Joyce.

Q Did he also sign that form?

A He did.

Q Now, at the time you were taking the statement from him, would you describe his physical condition at that time?

A Good.

Q Had he been sleeping and eating during the two days that you had observed him?

A That, plus he had eaten on the plane.

Q How long after you got on the plane did you begin talking to him?

A Approximately an hour, an hour and a half, after we took off.

Q Now, let me ask you this, Agent Garrett. Had you been to Southern Asia from the time of the event in January of 1993 until June 15th of 1997?

MR. GOEMANN: Your Honor, I'm going to object

on relevance grounds.

THE COURT: What's the relevance of where he's been?

MR. HORAN: Your Honor, he was searching for him all those years.

THE COURT: I don't find that to be relevant to the issues at this point. I mean you can come up and tell me if you think it is and I'm missing something.

BY MR. HORAN:

Q He began to discuss the incident with you?

A He did.

Q And will you tell us what he told you?

A He stated that in January or February of 1991 or 1992, he traveled to the United States, and after arriving in the United States, he told me he worked at two different places, one being Ace Moving Company, the other being Excel Courier Company. He said he remained in the United States until January of 1993. Then he went back to Pakistan.

He stated that he originally came to the United States and was going to stay here, but decided that he worked too hard here, and it just wasn't a place for him and that he wanted to go back home, and that he had decided

a short time before the shooting that he was actually going to do this particular shooting that he's been charged with.

Q Did he give you any reasons why he wanted to do this shooting?

A He gave me three reasons. He said that he had watched on CNN U.S. planes attacking parts of Iraq and this upset him because they are Muslim.

Also, he was upset with the CIA because of their involvement in Muslim countries and affecting the power control inside Muslim countries. That was the second reason.

The third was the treatment -- and I think he used the word, "killing of Pakistanians by U.S. components", and that he just decided that he needed to convey a message to the U.S. so that they would stop doing these kind of acts.

Q Did he tell you where he got the weapon he used?

A He said he bought the weapon at a gun shop in Chantilly, Virginia.

Q Did he tell you when that was?

A Approximately two weeks before the shooting he bought an M-16 and two pistols. And then, his words, two

or three days before the shooting he exchanged the M-16 for an AK-47.

Q Did you have any discussion of Israelis in the course of this whole thing?

A He stated that when he decided to do the shooting, it was going to be either the CIA or the Israeli Embassy in Washington.

He decided the CIA because he thought it would be easier and safer and he also thought that the CIA employees would not be armed.

Q What did he tell you about the actual shooting incident itself?

A That on the morning of January 25th, he left his home in Herndon, Virginia, to go to Route 123, outside the CIA.

He stated that he had been up and down 123 several times as a result of his courier service delivery.

He was familiar with the area, was familiar with the two left turn lanes that you get into to turn into the road that takes you back to the CIA front gate. He was aware that that's where those two lanes went.

Then on the morning of January 25th, he drove

his vehicle and parked in the right of the two left-hand turn lanes, got out of his vehicle and shot into, his words, five or six vehicles, shooting five or six individuals, and shooting ten to fifteen rounds.

Q Did you ask him why he stopped shooting?

A He said there wasn't anybody else left to shoot.

Q Did you ask him what gender the people were that he shot?

A He said that he only shot males because it would be against his religion to shoot females.

Q Did he tell you what he did after the shooting?

A He did. He drove away from the scene and his car was pointed in the direction toward the George Washington Parkway.

Approximately a quarter to a half mile from the shooting scene going towards the parkway was an Exxon gas station. He said he turned right -- he drove down to that gas station and he turned right, went a short distance, parked his car.

He also stated that he used his own vehicle to do this, an Isuzu pickup truck -- parked his Isuzu pickup, walked into this park -- which would now put him maybe a

mile from the crime scene -- and sat in the park for about an hour and a half.

Q Then what did he do?

A He said he was just sitting there. About 90 minutes and thought it was probably safe because nobody approached him.

So at that point he gets back in his vehicle, uses back streets to go to the Tyson's Corner area, then gets on the Dulles Toll Road and comes back to his home on Glade Drive, Laural Glade Apartments.

Q Where is that located?

A That's in Herndon, off the Reston Parkway.

Q Now, did he tell you what he did when he got back to the apartment?

A He went back to the apartment and he said he took the AK-47 that he used in the shooting, he put it in a green plastic trash bag and he slid it under the couch in the living of the apartment that he was staying in.

He recalled the apartment number as being 2 in the Laurel Glade Apartments. He changed clothes and took off the khaki-colored clothing that he had on. He went in the closet and he put on blue jeans.

He also turned the television on and stated

that he heard the Fairfax County Police Chief say that they didn't have a tag number of the vehicle used in the shooting.

At that point he felt he was fairly safe as far as the identity of his vehicle or him. He left the apartment, said he went and had some lunch. I recall he said he may have went to a McDonald's and had some lunch.

He then went to a market, a Pakistani market in Herndon and had decided once he got back to the apartment that he was going to go back to Pakistan.

So he goes to the market and he buys a one-way ticket back to Pakistan. The gentleman who sold him his tickets said -- according to Mr. Kansi -- that it would take a day and that he could pick the ticket up on the afternoon of the 26th of January.

So he leaves the market. He goes to the Days Inn Motel at Eldon and the toll road in Herndon, Virginia. Spends the night there.

Then he drives back to his apartment, parks his Isuzu pickup truck, and walks to the market. He's at the market for a few hours, asked the owner to give him a ride to National Airport to start his flight, and the owner says I'll take you.

He stated then he went National Airport. He flew from National Airport to JFK in New York, then got aboard a Pakistani international air flight. Flew to Switzerland, another city he couldn't recall, and then eventually to Karachi, Pakistan.

Q Did he tell you where he went from Karachi?

A He said he boarded a bus. He stayed in Karachi six or eight hours. He stayed in a hotel-type setting for six or eight hours, then got on a bus and went to Quada, Pakistan, his home town.

Q Did he remain there?

A He stayed there about two or three days. And he told me that once he got there he was concerned that he had put the rifle, the AK-47, under the couch, because he thought the police will probably find it and they'll figure out who did this shooting.

So at that point -- he had not told his family why he came back to Pakistan, but after two or three days, he left Quada, Pakistan, and he told me he went in, and basically for the next four and a half years traveled at various localities inside Afghanistan.

Q Did he tell you what any of those localities were?

A He mentioned three, Kaldimara, Kabul, which is the capital of Afghanistan, and another city over on the Pak-Afghan border, called Jhalalabard.

Q Did he tell you who he stayed with during that period of time?

A He said various individuals along the way that he was friends and associates with.

Q Did you have any discussions with him as to why he used the AK-47?

A Yes. He said the reason he used it is because it would be more accurate.

Q More accurate than what?

A Than a pistol, because he had purchased two pistols at the time he had purchased the M-16.

Q Did you have any discussion about the magazines that he got?

A He said he had approximately a hundred and fifty rounds on him when he did the shooting outside the CIA, and that the reason that he had the extra magazines was for fear or concern that law enforcement might show up at the scene and he would have to have extra ammunition to deal with them.

Q Did you ask him whether or not he knew the

people he was shooting?

A No. He said that he did not know the people that he was shooting, that he believed that they were CIA employees because they were in those two left-hand turn lanes to enter back into the CIA, but he didn't know who they were specifically.

MR. HORAN: I wonder could this be marked as Commonwealth's Exhibit Number 44 for identification?

The document referred to above was marked Commonwealth's Exhibit Number 44, for identification.)

MR. HORAN: Agent Garrett, I want to show you this document that's marked Commonwealth's Exhibit Number 44 for identification and ask can you identify it.

(Whereupon, Mr. Horan handed a document to the Witness for his examination.)

THE WITNESS: I can.

BY MR. HORAN:

Q And what is that document?

A This is a document that I prepared on June 17th, 1997.

At the conclusion of interviewing Mr. Kansi, I asked him if he would be willing to sign a statement and that I would write the statement out, I would read it to him. If it was true and accurate, would he be willing to sign it, and he said he would, and that's what this statement is.

MR. HORAN: Your Honor, I would offer this in evidence as Commonwealth's Exhibit Number 44.

THE COURT: Any objection to 44?

MR. GOEMANN: No, sir.

THE COURT: Forty-four is received.

(The document heretofore marked Commonwealth's Exhibit Number 44, for identification, was received into evidence.)

BY MR. HORAN:

Q Agent Garrett, I wonder would you read Commonwealth's Exhibit Number 44 for the jury?

A Yes, sir. It's dated at the top, 6-17-97. Excuse me. I have a cold. That's why I keep stopping.

"I, Aimal Mir Kasi, also known as Mir Aimal Kasi, freely and voluntarily provide this statement to SA Bradley J. Garrett and SA Shawn Joyce of the FBI. No threats or promises have been made to me. I can read and write and have a Masters degree in English.

Approximately two to three days prior to the shooting outside CIA headquarters in January of 1993, I purchased an AK-47 rifle and approximately a hundred and fifty rounds of AK-47 ammo. I also purchased two pistols at this time.

On Monday, 1/25/93, I drove my Isuzu pickup truck to the entrance road off of Highway 123 in Fairfax County, Virginia.

I had with me the purchased AK-47 and several magazines of ammo. I parked my truck in the right lane of the two left lanes that turn into CIA headquarters. I got out of my vehicle and started shooting into vehicles stopped at a red light. I shot approximately ten rounds, shooting five people. I aimed for the chest area of the people I shot.

I then returned to my truck, drove back to my apartment in Herndon, Virginia, after stopping at a park approximately one mile from the shooting. The next day I

returned to Pakistan. This statement is accurate and correct."

And then the last paragraph, "Also several days before the shooting, I decided to do the shooting at the CIA or the Israeli Embassy, but decided to shoot at the CIA because it was easier, because CIA officials are not armed. Signed Aimal Kasi, 6/17/97. Witness, SA Bradley J. Garrett, FBI, 6/17/97; SA Shawn M. Joyce, FBI, 6/17/97."

MR. HORAN: I have no further questions, Your Honor.

THE COURT: Cross examination?

MR. ROMANO: Your Honor, does Your Honor have a feeling as to how late you want to go today, because I'm not going to be finished with Special Agent Garrett by 5:00 o'clock or 5:30.

THE COURT: Well, we'll see how it goes.

MR. ROMANO: Your Honor, may I approach the Clerk?

THE COURT: Yes.

MR. ROMANO: May I have this marked for identification as Defendant's Exhibits F, G, H and I, four photographs?

(The documents referred to above were marked Defendant's Exhibit Numbers F, G, H, and I, for identification.)

CROSS EXAMINATION

BY MR. ROMANO:

Q Special Agent Garrett, you said that the conversation that you had with Mr. Kasi on the aircraft coming from wherever he started, in whatever foreign country you brought him from, to the United States, started about an hour to an hour and a half after you got on the plane?

A Approximately.

Q And before then, you were having a conversation with him concerning what he did in the United States before January 25th, 1993, and what happened afterwards?

A That was a continuous conversation. That all started about an hour or an hour and a half after we took off.

Q And did your reading of the rights precede or follow that background information that you were getting from him?

A Followed.

Q The conversation that you had -- Well, let me ask you this.

The flight that you took from this foreign country, which was Pakistan, right?

A That is correct.

Q Did you fly non-stop to Dulles?

A We did.

Q And that was approximately 20 to 21 hours?

A Correct.

Q And you were on the plane, you and six -- was it you and six other FBI agents or you and five other FBI agents?

A Six, total.

Q You and five other FBI agents and Mr. Kasi?

A Correct.

Q And you seven people were the only people in this compartment that was inserted into this aircraft that you were flying on?

A That's correct.

Q The conversation that you had with him that Exhibit L and Exhibit 44 memorializes took approximately how much of that 21 hours?

A Are you referring to this signed statement? What document are you referring to?

Q I'm talking about the conversation that you had with him started about an hour and a half after you left Pakistan.

A Right.

Q And finished how long after that?

A The background conversation took about 45 minutes. The conversation about the shooting took a little over an hour, maybe up to an hour and a half.

Q An hour to an hour and a half?

A Correct.

Q And at the end of that conversation is when you asked him if it would be okay if you would write something down and he would read it and sign it?

A Correct.

Q And what you have written down, which is Commonwealth's Exhibit 44, is a distillation of what he said? It's not everything he said, right?

A Correct.

Q When you arrested Mr. Kasi in Pakistan, you and three other FBI agents?

A Correct.

Q All of you were armed?
A Yes.
Q All of you with handguns, and I believe you said previously one with a shoulder gun?
A Correct.
Q And this was in the middle -- the wee hours of the morning in Pakistan?
A Approximately 4:00 a.m.
Q And you had information that Mr. Kasi was alone in a hotel room?
A That's correct.
Q And he was?
A He was.
Q When you went there, that's right where he was?
A Exactly.
Q And you knocked on the door and when he answered it, you all went in?
A We did.
Q And you were all armed?
A We were.
Q And you took him down?
A We did.
Q Now, I was a bit confused about -- you said he

started to scream, and you kept asking him to stop, and he wouldn't?

A Correct.

Q So eventually you gagged him?

A We did.

Q And he still didn't stop screaming. Eventually, he stopped screaming after you gagged him?

A That's not true. He continued to scream even after he was gagged.

Q Yeah, I think that's what I said. Even after you gagged him, he continued to scream?

A Yes.

Q But at some point he stopped for a while?

A That's correct.

Q But you also said you asked him his name. Did you do that before or after you gagged him?

A What happened was, after he was gagged he was able to move the gag a little bit. So it really wasn't restricting him from talking.

Q Well, he was cuffed, wasn't he?

A He was cuffed, but his mouth wasn't cuffed. So he could still --

Q He moved the gag with his mouth?

A Yes. He was able to talk around the gag.

Q So after you gagged him and after he eventually stopped screaming, while he had the gag over his mouth, you asked him his name?

A I did.

Q And you put the gag in his mouth so you wouldn't hear him screaming?

A That's correct.

Q And a gag, would it be fair to say, is not something that's conducive to having you speak through it; is that not correct?

A True.

Q And when you asked him his name, while he was gagged, he said fuck you?

A He did.

Q And have you arrested a lot of people in your career?

A Yes.

Q Is this fairly typical of the people that you arrest? They are not very happy to be arrested?

A Typically, they are not happy to be arrested.

Q And this case was no different?

A This case was no different.

Q Now, were you also -- you were with Mr. Kasi when he arrived in the United States; is that right?

A I was.

Q Were you also with Mr. Kasi at the time that he was transported from Dulles Airport to the Fairfax County Adult Detention Center?

A I was.

MR. ROMANO: Your Honor, may I approach The witness?

THE COURT: Yes. Show Mr. Horan what you have so he knows what you're showing.

(Whereupon, Mr. Romano handed some documents to Mr. Horan and then the witness for examination.)

BY MR. ROMANO:

Q Special Agent Garrett, do you recognize what those photographs depict?

A Yes, sir.

Q Can you tell us what they do? Well, let me ask you this. When you arrived with Mr. Kasi at the Adult Detention Center, were you aware of how he looked?

A I was with him.

Q Would you take a look at those photographs and see if they reflect anything accurate or not accurate about

the way he looked when he arrived at the Adult Detention Center on the 17th of June?

A The only thing that's not accurate is this white dot on his nose. That wasn't on it when I arrived.

Q So if that happened, it was when he was in the facility? Did you come into the facility with him?

A I did.

Q And that white dot wasn't there? Do you know what that is?

A No.

Q Does it appear to be some kind of a bandage?

A It appears to be a bandage.

Q Other than that white dot which you have no explanation for, are those four photographs -- do they accurately depict how Mr. Kasi looked on the 17th When you got him to the Adult Detention Center?

A It does.

Q And that was about what time? It was in the evening, right? It was dark?

A These photographs would have been taken probably 8:30 to 9:00 p.m., at night.

Q And this was on the 17th?

A Correct.

Q And when you went into the hotel room, it was the 15th, at 4:00 o'clock Pakistani time, in the morning?

A Correct.

Q Which is the time when the injuries that were reflected in those photographs were inflicted on Mr. Kasi, right?

A Correct.

Q So they've had whatever the time between 4:00 o'clock a.m. on the 15th of June to 8:30 or 9:00 p.m. on the 17th of June, given the difference in Pakistani time, which is about nine hours, right?

A Correct.

Q To heal?

A Correct.

MR. ROMANO: Your Honor, I would move those into evidence.

THE COURT: Any objection?

MR. HORAN: I'll object to the one with the dot, whichever one that may be, because he testified that doesn't accurately reflect what he saw in that one.

THE COURT: May I see the pictures?

MR. ROMANO: Yes, sir.

(Whereupon, Mr. Romano handed the photographs to His Honor for his examination.)

THE COURT: I overrule the objection. I think the jury can take his testimony into account in viewing that picture.

Let me see counsel up here just a second.

BENCH CONFERENCE

THE COURT: When the Clerk marked these, He marked them showing the hearing date. We don't usually do that. Did you ask him to do that?

MR. ROMANO: No, sir. They had already Been marked from that hearing, he just didn't take the stickers off.

THE COURT: I know. Do you want them marked? The problem is you've got to have the other pages.

MR. ROMANO: I know. Leave them marked.

THE COURT: That's why I asked.

(The documents heretofore marked Defendant's Exhibit Numbers F, G, H, and I, for identification, were received into

evidence.)

OPEN COURT

BY MR. ROMANO:

Q Now, I know you previously stated that this was a small room and Mr. Kasi was in it alone; is that right?

A That's correct.

Q How long were you in the room before you put him in the vehicle to take him to the first plane?

A Ten to fifteen minutes.

Q And for most of that time -- for all of that time, after you took him down, he was handcuffed?

A He's handcuffed.

Q With his hands cuffed behind him?

A Correct.

Q And when did you put the leg cuffs, the ankle cuffs, on him?

A They were put on before he was taken out of The room.

Q So he was taken out of the room. He was handcuffed and ankle cuffed and gagged?

A No, that's not accurate. He was not gagged.

Q You took the gag off?

A Correct.

Q And was that before or after you put the hood

over his head?

A I don't recall.

Q When he left the room, he had the hood on, and ankle cuffs, and handcuffs?

A That's correct.

Q And you and the other three FBI agents escorted him to the plane?

A That's correct.

Q And at this point now, after you've arrested him and were going to take him to the plane, there were other people present on the scene?

A There are.

Q And those people were also armed?

A They were.

Q When you went on the plane, did all four of the FBI agents accompany Mr. Kasi to the first plane you took him?

A No. Myself and one other agent.

Q Yourself and one other agent were in the vehicle that took him to the plane or were you all four there and two of you were dropped off?

A In the vehicle that went from the hotel to the plane was myself and Special Agent Joyce, Mr. Kasi, and

some other individuals.

That vehicle then goes to the airport. We get out of the vehicle, and then another FBI agent goes with me on the plane to the next location.

Q So Special Agent Joyce then did not get on the plane?

A Not on that plane.

Q Now, the other individuals -- you said it was you and Special Agent Joyce, Mr. Kasi, and some other individuals. These were the other armed individuals you were talking about earlier?

A Correct.

Q And this was how long a ride to the plane?

A From the hotel? Is that your question?

Q Yes.

A Thirty, forty-five minutes, approximately.

Q And during this time, you were not having any discussion with Mr. Kasi?

A Correct.

Q And nor is Special Agent Joyce?

A Correct.

Q And then is it safe to assume that the other people weren't talking to him either?

A They were not, because he was sitting next to me, so I know.

Q And he was fully handcuffed?

A Correct.

Q Then when you got on the plane, Special Agent Joyce dropped away and another agent joined you?

A That's correct.

Q And were these other armed individuals also with you on the plane?

A Some of them.

Q So there are enough of them so that even though some were left behind, it was not one; there was still some left?

A Correct.

Q And Mr. Kasi was still in handcuffs, ankle cuffs, and a hood was placed over his head -- was still over his head?

A That's correct.

Q And at some point I believe you moved the hood up a little bit so he could breathe?

A Shortly after getting aboard the plane.

Q But you never took it off?

A It was not taken off.

Q And that plane trip was about an hour and a half?

A A little over an hour, between an hour and an hour and a half.

Q And then when you landed, you were another hour and a half on ground?

A Sitting on the plane.

Q Right; and still cuffed, cuffed and hooded?

A Correct.

Q Mr. Kasi, that is?

A With the hood rolled up.

Q Right. And during the entirety of the plane trip, no conversation between you and Mr. Kasi or anyone else and Mr. Kasi?

A Correct.

Q And while you were on the ground for the hour and a half, no conversation?

A Correct.

Q At any point -- maybe that's an in-artful question. Conversation implies back and forth.

Were you talking to him and he wasn't responding?

A I wasn't talking to him at all.

Q Was he talking to you?
A No.
Q Was he talking to anybody else?
A No.
Q So approximately three and a half to four hours after you took him down and took him to the plane was when you took him off the plane to take him to the detention center?
A Approximately.
Q And you took him to the detention facility -- you and the other special agent that was with you took him to the detention facility?
A Special Agent Joyce went with him initially, rode in the back seat with him to the detention facility.
Q Well, Special Agent Joyce wasn't on the plane.
A He came on another plane.
Q On another plane that took off and landed together?
A Shortly. One followed the other.
Q And then you and Special Agent Joyce -- or Special Agent Joyce accompanied him to the detention facility; you did not?
A Right, that's correct.

Q Was Special Agent Joyce alone with him?
A There were other individuals in the vehicle with Special Agent Joyce and Mr. Kasi.
Q Were they the same or different individuals that were on the plane?
A Different.
Q They were armed, too?
A I don't know. I didn't see weapons. I don't know.
Q You were never unarmed during the course of this?
A Correct.
Q Nor were any of the other FBI agents?
A Correct.
Q Now, I believe you called it the holding facility; is that right?
A I did; that's correct.
Q Or the detention facility. Is either or both of those accurate?
A They are both accurate.
Q And this was not another hotel?
A This was not another hotel.
Q This was a facility that was meant to keep

people after they were incarcerated?

A Temporarily, yes.

Q He was in a cell?

A He was in a cell.

Q Three walls, no windows, and bars on one side?

A Correct.

Q You said that you got him there about 8:30 in the morning?

A Approximately, yes.

Q And he was there at that facility -- now, this is later in the morning of the 15th of June?

A Correct.

Q And sometime in the morning of the 17th of June is when you got clearance to take him out of the country?

A Monday night, the 16th.

Q So Tuesday morning, the 17th, is when you actually took him out of there?

A Correct.

Q And he was in this facility for the entirety of that time?

A He was.

Q And he was in this facility by himself, this cell by himself?

A He was in the cell by himself, yes.
Q And you or the other FBI agents was surveying him the entirety of the time he was there?
A Correct.
Q As I believe were also whoever was running the facility, because it was not run by the United States; is that right?
A Correct.
Q So he was never alone, insofar as there was somebody else always where they could see him?
A That's correct.
Q And he was cuffed still?
A In the front.
Q How about ankle cuffs?
A No.
Q The hood was gone or was it still there?
A The hood was gone.
Q When did the hood come off?
A Once he arrived -- according to Special Agent Joyce, once he arrived at the detention facility.
Q So after the plane landed and he was taken to the detention facility with Special Agent Joyce, he still had the hood on?

A Correct.
Q And he had it taken off then when he got to the facility?
A Correct.
Q Mr. Horan asked you what was the purpose of you observing him continually in shifts and you said it was twofold, to make sure that nobody talked to him?
A Correct.
Q And to make sure that he was humanely treated. And then you said that you would make sure that no one approached him and no one did approach him for two days?
A That's correct.
Q And at no point during the time, during this two days, did you attempt to interview him like you did on the plane coming to the United States?
A That's correct.
Q And at any time, do you know if he mentioned any interest in talking to you?
A Not that I know of. He never mentioned anything to me.
Q So in essence, he just stayed there for two days, by himself, in a cell. Nobody approached him and nobody talked to him?

A Well, other than the conversations about his health.

Q You'd go in and take his pulse.

A Asked him how he felt and check him.

Q And make sure his wounds weren't infected?

A Correct.

Q Now, in the first time that you had any conversation other than that which you have already described, to take his pulse, to make sure his wounds aren't infected, and to keep people away from him, was on the plane, coming from Pakistan to the United States?

A Other than asking his name in the detention facility. I did do that.

Q Did you get a similar response to the one you got before?

A No. He gave me his name.

Q And did you just walk in and ask him his name, or did you preface this with, well, we know who you are; you might as well tell us?

A No. I just asked him his name.

Q At any time between the time that you arrested him in the hotel room and the time that you took him out of the detention facility on the 17th, two days later, did you

tell him you were FBI agents?

A Yes.

Q When?

A In the back of the vehicle, going to the first plane.

Q Did that get any response from him?

A Unh-huh.

Q Did you give him any other explanation or did you just say Brad Garrett, FBI?

A We said we were with the FBI, and he said you're going to take me back to the United States; and I said yes.

Q So previously, when you said that there wasn't any conversation on the ride, that was not accurate?

A Other than telling him who I was, and he responded, yes.

Q Was there anything else? That's it? That's the entirety of the conversation?

A Correct.

Q The facility that he was held in for two days was windowless, I believe you said?

A Correct.

Q And the entirety of this facility was made up

of cells; one of which Mr. Kasi occupied?

A Correct.

Q This was the middle of June in Pakistan, right?

A It was.

Q What was the temperature there?

A Warm.

Q Warm or hot?

A It was in the eighties inside the cell area.

Q Now, during the flight to the United States, was he handcuffed?

A Yes.

Q And, in fact, from the time that you arrested him in the hotel room to the time you delivered him here, he was never not handcuffed?

A Correct.

Q And at some point on the plane ride, you decided that this was the time that you were going to talk to Mr. Kasi about what you had arrested him for?

A That's correct.

Q How did that conversation begin? Did you start asking him questions? How did it begin?

A It began by myself and Special Agent Joyce introducing myself again to him, and asking him if he would

be willing to talk to us about his life and what occurred when he lived in the United States.

Q But the first part of this conversation was preparatory. It had nothing to do with what you had arrested him for. It was what were you doing in the United States; why did you come to the United States; what did you do since you left; right?

A That's correct.

Q And then the course of the interview, I believe you said it was about an hour to an hour and a half?

A After the forty-five minutes?

Q Right. Yes, the part that's reflected in Commonwealth's Exhibit Number 44, the part that you instilled into that exhibit?

A Correct.

Q The Exhibit 43 I believe was the waiver of rights form. It says interrogation and advice of rights. Now, is that what happened on the plane? You interrogated him, right?

A I interviewed him.

Q Well, this doesn't say interview and advice of rights, does it?

A The form says interrogation.

Q But you're saying that it wasn't an interrogation. It was just an interview?

A It was an interview.

Q Did the interview take the form of question and answer? Or was it just tell me what happened and you talked about it?

A Both.

Q Both? How did it change from one character to the other, when it did?

A Depending on whether I asked an open-ended question or a specific question.

Q Well, then you asked the questions and he responded?

A That's correct.

Q And then when he stopped responding, you asked another question and he responded?

A That's correct.

Q So the character of the interview was determined by you, and you called the shots as to what you were going to talk about?

A That's correct.

Q Now, other than what you have there in Commonwealth's Exhibit Number 44, did you write anything

else down?

A Well, I took notes while we were having this conversation.

Q Did you take notes during the entirety of the conversation?

A Yes.

Q And why did you not ask Mr. Kasi to read and sign your notes, instead of the distillation as to the exhibit that's Commonwealth's Exhibit Number 44?

A Because this was a much clearer form for him to sign than my notes.

Q Is there a form to sign?

A Yes, to clearly and accurately depict what he had told me about the offense.

Q Well, aren't your notes, contemporaneous notes made during the interview, the vast evidence of what he clearly and accurately said during the interview?

A Well, to me.

Q To you?

A Maybe not to someone else.

Q So you determined that, what it would look like to someone else, and then you made that notation, and then you asked him to sign that?

A No. What I'm saying is that my notes may not be clear to you if you looked at them. They are very clear to me. This is very clear to me what he wrote (indicating).

Q So are you saying that your notes are fragmentary?

A No.

Q Are legible?

A They are legible.

Q What makes your notes less useful to someone reading them than what you've chosen to put down as Commonwealth's Exhibit 44?

A Because there's many sentences that aren't complete sentences. They are words or phrases.

Q But they were taken contemporaneous with what was being said?

A Correct.

Q And they accurately reflected what was being said?

A Correct.

Q But you're just saying that wasn't any more accurate than the two-page version that you have there?

A This is just a summary of what he said happened

in regard to the events.

Q Now, I believe Mr. Horan asked you -- in fact, I know Mr. Horan asked you if prior to your asking Mr. Kasi to sign this document -- he asked you did you give him any hope of leniency.

A He asked me that question, yes.

Q You said no?

A I said no.

Q Or any hope of a reward, and you said no?

A Correct.

Q And he also asked you if you gave him any indication that if he did not give you a statement something bad would happen to him.

A I did not say that.

Q Did you give him any indication that if he did say something to you, something bad would happen to him?

A No.

Q Do you consider being on trial for capital murder something bad?

A Certainly.

Q And would you consider using a distillation of his statement that you wrote down something bad?

A What do you mean, something bad?

Q Is it good for him?

A He gave it to me freely.

Q Now, these are your words, or his words, that I freely and voluntarily provide this statement?

A Those are my words.

Q And he just signed off on it?

A Well --

Q After he read it?

A After two things -- I read it to him, and then he read it.

Q Okay. Now, on the second page of that document, about the middle of the page, where it says, "The next day I returned to Pakistan. This statement is accurate and correct." Do you see that?

A Yes.

Q Now, that appears to be the end of the statement, and then you pick up again, also several days before.

A Uh-huh.

Q What made you decide that that was not the end of the statement and you needed to have that additional paragraph?

A Actually, it's just a matter of that I wrote --

I had been up for five days when I wrote this, and that the sentence, "This statement is accurate and correct," should have been after the last paragraph.

Q Right.

A It's not.

Q Well, you wrote it before you wrote the last paragraph.

A True.

Q So when you wrote it, you thought you were done?

A No.

Q That's not fair? That's not a fair assessment?

A No.

Q So when you wrote, "This statement is correct and accurate," you knew you were going to keep writing?

A I did.

Q And you had been up for five days?

A Yes.

Q Now, is the fact that you were up for five days reflected in a -- are you saying that this is disjointed because of the way that you were thinking at the time?

A No.

Q Then what does you were up for five days have

to do with the misplacement of that statement?

A Well, that perhaps with a little more sleep, I might have put that one sentence at the end, instead of a paragraph shy of the end.

Q Do you have your notes with you today?

A I do.

MR. ROMANO: Your Honor, could we have the witness produce the notes, where we might be on the same page he is with respect to his testimony?

MR. HORAN: There's no authority for him to do that under Virginia law.

THE COURT: I don't know of any reason why you're entitled to that.

MR. ROMANO: Your Honor, if he's testified from his independent recollection of what happened on the 17th of June, maybe that's true.

But he said he consulted his notes before he came in here and I think we have a right to know whether what he's testified to is from his memory of what happened on the 17th or what he remembers having written down, having read it again last night.

THE COURT: Well, if you have some authority -- I know that lawyers say that all the time, but I don't

think there's any authority for it. And if you have some authority for it, I'll be glad to look at it.

Otherwise, consistent with my reading of the law, you're not entitled to it.

MR. ROMANO: Your Honor, maybe had I known that there were other notes, that maybe we would be prepared for that.

THE COURT: I sustain the objection.

BY MR. ROMANO:

Q Now, how did the interview end?

A With the statement.

Q With the two-page statement?

A Correct.

Q And you were done talking to Mr. Kasi about, what, three and a half hours into the flight?

A By the time this was done, approximately.

Q And then another 17 hours went by?

A Well, no. Because of the time difference, we actually weren't in the air 21 hours. Do you understand? Because of the time difference --

Q Well, it's not a 21 hour flight. It's a twelve-hour flight with a nine-hour kicker for Pakistan time.

A Correct.

Q So you were in the air twelve hours?

A Correct.

Q And was there any other conversation after the three and a half hours that you had that ended in this statement? Did you have any other conversation with Mr. Kasi?

A Other than about food and water and going to the bathroom.

Q So he was just sitting there with six FBI agents for another six and a half to seven hours?

A That's correct.

Q At any time during your note taking, did -- Well, was Mr. Kasi aware of what you were writing? Could he see it from where he was?

A He was sitting directly across from me.

Q How far away?

A About the width of -- (indicating.)

Q And you were facing each other?

A Just like this, just like I'm facing you.

Q Were you writing your notes, your contemporaneous notes, on a pad similar to the paper that is reflected there?

A This was taken out of the pad it was written on.

Q And your notes were also written and then you distilled them into that?

A Correct.

Q On the same pad? Did Mr. Kasi ever -- Well, let me ask you this.

When Mr. Kasi would say something to you, would you then say it back to him to make sure it was accurate?

A Sometimes.

Q I mean did you say, do I understand you correctly; is this what you're telling me?

A Sometimes I did.

Q Was there any point during that interview that he said, no, that's not what I said?

A He never said that.

Q Was there ever a point when you wrote -- well, let me ask you this. Let me give you a specific example.

Did you write down at one point the name Iran, and he said no, that should be Iraq?

A I don't recall.

Q So you don't recall there ever being a time when he said, no, no, that's not right; change that?

A I don't recall that.

Q In essence, what you're saying is that this is an accurate distillation of what Mr. Kasi told you on the plane back? This is a copy of that? This is Commonwealth's Exhibit Number 44, right?

A In reference to the events, that is correct.

Q And there is nothing of substance, that you thought was substantive, that you did not include in this statement?

A Correct.

Q And if there had been, you would have put it in there?

A Correct.

Q And it's not unfair to say that you anticipated that Mr. Kasi would be in court and you would be testifying?

A Are you asking me did I anticipate that happening?

Q Yes.

A The answer is yes.

Q And when you prepared that document, did you anticipate that that document would be utilized in that way?

A Yes.

MR. ROMANO: The Court's indulgence for a moment.

(Brief pause while Mr. Romano conferred with his other counsel.)

MR. ROMANO: Your Honor, I was wrong. I have no more questions for the agent.

THE COURT: Anything on redirect?

REDIRECT EXAMINATION

BY MR. HORAN:

Q Agent Garrett, do the photographs that you identified show some scratches on his arm, on one arm?

A Yes, sir.

Q And show some scratches on his back?

A That's correct.

Q Do you know when those scratches occurred?

A I do.

Q When was that?

A In the hotel room.

Q When you handcuffed him in the hotel room, where was he located? On the floor or what?

A On the floor -- he was on the floor.

Q And once you handcuffed him on the floor, what

did you do with him?

A Moved him to the bed, face down.

Q With his hands behind him?

A Correct.

Q At some point you rolled the hood up that was placed over his head?

A That's correct.

Q What was the reason for rolling up the hood?

A I was concerned about how warm it was and his difficulty in breathing.

Q And so how far did you roll the hood up?

A Up to the bottom of his nose, so that his mouth and the bottom of his nose were exposed.

Q Once you did the drive from the airport facility to the holding facility, Joyce was with him during that ride?

A Correct.

Q Did you see him after he arrived at the holding facility?

A Later in the day.

Q Was there any difference in his appearance between the last time you saw him that day and the way he appeared in the holding facility?

A No.

MR. HORAN: I have no further questions, Your Honor.

THE COURT: May he be excused?

MR. HORAN: Yes, he may, Your Honor.

MR. ROMANO: Yes.

THE COURT: You're excused and free to go or stay, as you wish. Thank you.

(Witness excused.)

THE COURT: Okay; that's today. I want to talk to you all about something of timing.

You know -- I think I've talked to you all about my cocoon theory, that you build a cocoon around yourself so you don't get any information from any other source.

I suspect that's not a comfortable cocoon and so I want to move the case in terms of time as quickly as we reasonably can and have as little time for you to be in the cocoon as I can.

All that by way of saying I thought about the possibility, depending on the timing, of sitting on Saturday. And I want to know, not necessarily right this

minute, but perhaps tomorrow, how that would sit with you.

We would never sit on Sunday, but if we sat on Saturday, I don't know whether that would create any problem for anybody -- but if we did, then we might be able to conclude a little earlier, and there would be less time that you would be out in the big world with the cocoon around you.

In here, you don't have to worry about the cocoon, because we cocoon you. But out in the big world, you're responsible for your cocoon.

So I'd like you to consider whether that would be a possibility. We need to take one day of break, but that's a possibility that I'd like for you to consider. If that creates an undue hardship, we'll talk about that.

We're not going to decide that this minute. And it may or may not come to pass because of the timing of the case, but I want you to think about that.

MR. HORAN: Your Honor, I would like to advise the Court at this juncture that the Commonwealth rests.

THE COURT: Well, actually you don't quite rest, because we still have the cross examination of Mr. Miller to take place tomorrow.

So you can tell me and have just told them that you don't have anymore witnesses after we conclude with Miller, as I understand it.

MR. HORAN: Yes.

THE COURT: But we postponed his final examination until tomorrow morning, so --

MR. HORAN: I had forgotten.

THE COURT: Okay.

MR. GOEMANN: Your Honor, it would be amenable to -- if Commonwealth wants to rest without cross examination of Mr. Miller, if then you strike all the direct examination of Mr. Miller and everything that follows from it.

(Laughter.)

THE COURT: Well, it is getting late in the day, isn't it?

(Laughter.)

THE COURT: I don't think we'll quite do that. Anyway, so be thinking about that, and it's possible that we could have a Saturday session.

Just think about it -- or part of a Saturday, anyway.

The usual speech. I've sort of run out of

steam of this speech. I don't have any new way to say it.

I wonder if one of you would like to give -- no, no.

(Laughter.)

THE COURT: Don't let yourself get any information anywhere about this case.

There will obviously be publicity about the case. After the case is all over, you can go back and see all the publicity that there was; but I guarantee you that there is publicity about it from many different sources and you are to avoid any publicity about this case or anything that is remotely related to it. You've heard a lot of other things today now that might be in some peripheral way related to this case.

Avoid hearing, reading, seeing anything related, anything that has anything to do with this case, and avoid discussion with any family members or friends.

Continue to say to those people who ask you what you've been doing, jury duty. Next question, whatever it is, the Judge says I can't talk about the case.

By now, most of them have figured out what you're doing that know you well. So you need to be

particularly careful to stop them from having any conversation with you whatsoever.

And don't let yourself get any information from anywhere that would help you in any way decide this case.

You are going to decide the case based on the evidence you heard, the testimony you heard from the witness box and the evidence that's introduced, the law that I tell you, and the argument of counsel. Those are the things you are going to decide the case upon.

So we'll start at 9:00 o'clock in the morning. The Bailiff will tell you when and where you need to be so we will be ready to go at 9:00 o'clock.

Have a nice evening. Good night to you.

Counsel remain for a minute to talk about the timing.

MR. ROMANO: Can I make a request that since we have to talk to this expert overnight, is it possible for us to just go at 10:00 tomorrow, so that I have some time in the morning, if it's necessary?

THE COURT: Yes, 10:00 tomorrow, 10:00 o'clock tomorrow.

MR. ROMANO: Thank you, Your Honor.

THE COURT: They will tell you when and where

you need to be for 10:00 tomorrow.

(Whereupon, at approximately 5:16 o'clock p.m., the jury members retired from the courtroom.)

THE COURT: However, I'd still like to see Mr. Goemann and Mr. Horan here earlier than that to talk about the other issues, the legal issues that were raised.

MR. HORAN: Is quarter to 10:00 all right, Your Honor?

(Laughter.)

THE COURT: That will probably do it. How about 9:30?

MR. GOEMANN: I think I can manage that.

THE COURT: And I think if you are here, Mr. Romano then can still be taking care of the other matters.

And we'll do it in court so that Mr. Kasi can hear what we're doing. But we know the issues that we have, and you've had a call made about the other matter that we've talked about, the instruction?

MR. HORAN: Yes.

THE COURT: Have you got instructions ready?

MR. HORAN: I've got some of them ready, yes.

THE COURT: Well, does Defense have

instructions ready?

MR. ROMANO: Yeah, we've got some instructions ready, Your Honor.

I wasn't privy to the conversation at the bench, but I would imagine that there is one particular instruction that may be causing you some trouble.

It's been causing us trouble, too. So I guess pending the resolution of that.

THE COURT: Can you share with them what you found out about that instruction?

MR. HORAN: Yes, I will. I don't know what it is right now, but I will let them know what the argument was in the Supreme Court.

THE COURT: When are you going to let them know?

MR. HORAN: Tomorrow morning.

THE COURT: Okay. I don't know what we're going to do about instructions.

I sort of wanted you all to exchange them and I don't know that there is a lot of controversy about them in this case.

But that may create a problem, and I don't know what the problem is myself, and you don't, either. So

we're all equally ignorant and we'll equally become informed tomorrow.

But we'll start court at 9:30 in the morning, jury at 10:00; okay?

MR. HORAN: Yes, sir.

THE COURT: Recess until then.

(Whereupon, the hearing in the above-entitled matter was recessed to reconvene the following morning, Friday, November 7, 1997, at approximately 9:30 o'clock a.m.)

* * * * *

CERTIFICATE OF COURT REPORTER

I, CHRISTINE G. SWANSON, a Certified Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings and thereafter reduced the same to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

CHRISTINE G. SWANSON
Certified Verbatim Reporter